



PINK REPORT

**Annual Report on the State of Human Rights of
LGBTI People in Bosnia and Herzegovina**

2024 Pink Report
Annual Report on the State of Human Rights of
LGBTI People in Bosnia and Herzegovina

Sarajevo, 2024

Human Rights Edition of Sarajevo Open Centre
Publication no: 94

Title: 2024 Pink Report
Annual Report on the State of Human Rights of LGBTI
People in Bosnia and Herzegovina
Authors: Admir Adilović, Amil Brković, Amina Dizdar, Branko
Ćulibrk, Darko Pandurević, Delila Hasanbegović Vukas
Editor: Darko Pandurević
Language Editing (BCS): Nataša Kerezović
Translation: Context o.d.
Layout and Design: Filip Andronik
Publisher: Sarajevo Open Centre, www.soc.ba
On behalf of the Publisher: Emina Bošnjak

© Sarajevo Open Centre, www.soc.ba

Non-commercial reproduction, photocopying or any other form of multiplication of the entire publication or parts of it is desirable, as long as the publisher is informed beforehand in writing to the following e-mail address: office@soc.ba.

The report covers the time period from 1 January 2023 to 31 December 2023, except for data with a different collection period specified.

This publication is a product of work on the human rights of LGBTI people under several Sarajevo Open Centre's projects, which were supported by: Sweden and Sigrid Rausing Trust.

This publication was made possible under institutional support to Sarajevo Open Centre provided by Sweden through development cooperation program. The contents of this publication are the sole responsibility of the publisher and can in no way be taken to reflect the views of the donors.

ISSN 2303-5552

 SARAJEVSKI
OTVORENI
CENTAR

 Švedska
Sverige

2024 PINK REPORT

ANNUAL REPORT ON THE STATE OF
HUMAN RIGHTS OF LGBTI PEOPLE IN
BOSNIA AND HERZEGOVINA

SARAJEVO, 2024

TABLE OF CONTENTS

EXECUTIVE SUMMARY	11
NEGATIVE PRACTICES AND HUMAN RIGHTS VIOLATIONS	13
FBiH Ministry of Health	15
Legal Recognition of Gender Conditioned by ‘Complete’ Gender Reassignment and Divorce	16
GOOD PRACTICES	18
Quick and Efficient Reaction of the SC Cantonal Prosecutor’s Office Regarding Attacks on Gay Men via Dating Apps	18
Extended term of the Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in BiH	19
Amendments to the Criminal Code of the Brčko District and the Regulation of Hate Speech	20
PRIORITY MEASURES TO BE UNDERTAKEN	21
Adoption of the Law on Same-Sex Partnership	21
Responsibility of and Imposing Sanction on All Participants in Attacks against LGBTI People and Activists in Banja Luka	21
Adoption of the new Law on Peaceful Assembly in the Sarajevo Canton	22
Legal Recognition of Gender Identity and Coverage of Gender Reassignment Costs through Health Insurance	23
I EQUALITY AND ANTI-DISCRIMINATION	25
International Legal Standards and Obligations of Bosnia and Herzegovina	25
National Legal Framework	26
Institutional Anti-Discrimination Action	26
Public Policies to Combat Discrimination of LGBTI People	30
Documented Cases	31
Guidelines for Further Action	35

II	HATE CRIME AND INCITEMENT TO HATRED	36
	Legal Framework	36
	Institutional Action	36
	Documented Cases at the Prosecutor's Offices and the Police	37
	Prominent Cases of Hate Speech	40
	Guidelines for Further Action	42
III	FREEDOM OF ASSEMBLY AND ASSOCIATION	43
	Legal Framework	43
	Institutional Action	43
	Documented Cases	44
	Guidelines for Further Action	46
IV	FAMILY LIFE AND SAME-SEX PARTNERSHIP	48
	Legal Framework	48
	Institutional Action	48
	Documented Cases	49
	Guidelines for Further Action	50
V	RIGHTS OF TRANSGENDER PEOPLE	51
	Legal Framework	51
	Institutional Action	51
	SOC's Action on Healthcare	53
	Social Reality	54
	Documented Cases	54
	Guidelines for Further Action	55
VI	HUMAN RIGHTS OF INTERSEX PEOPLE	57
	Legal Framework	57
	Institutional Action	58
	Social Reality	58
	Guidelines for Further Action	59

VII ASYLUM	61
Legal Framework	61
Social Reality	61
Documented Cases	62
Guidelines for Further Action	63
VIII SOCIAL PERCEPTION OF LGBTI PEOPLE IN BOSNIA AND HERZEGOVINA	64
IX ACTIVITIES IN LOCAL COMMUNITIES ON THE PROMOTION OF LGBTI RIGHTS	66
Activities of Organisations Advocating for LGBTI Rights in the Republika Srpska	66
Guidelines for Further Action	69
Activities of Organisations Advocating for LGBTI Rights in Tuzla Canton	69
Legal Framework and Institutional Action	70
Social Reality in the Local Community	72
Guidelines for Further Action	72
Activities of the BH Pride March	73
Activities of the Group of Parents and LGBTIQ+ Children	74
GLOSSARY OF LGBTI TERMS	75
ADDENDUM	79
Political System of Bosnia and Herzegovina	79
About Sarajevo Open Centre	81
Editor	83
Authors	83

EXECUTIVE SUMMARY

The past year and period have seen a number of negative events that have had a significant impact on the human rights of LGBTI people in Bosnia and Herzegovina. The trend that has been visible for years is becoming increasingly evident, demonstrating that, while the progress and position of LGBTI people in BiH is unsatisfactory throughout the country, there is a growing disparity when comparing the two entities. Over the last year, **in the Republika Srpska entity, we have witnessed an organised attack by hooligans on BH Pride March activists in Banja Luka, a series of examples of incitement to violence and discrimination of LGBTI people by the highest officials of the Republika Srpska and public figures, organising groups and non-governmental organisations with a clear anti-gender agenda, as well as announcements of the abolition of “gender identity” as a prohibited ground in the Criminal Code of the Republika Srpska and other regulations.** All these events cannot be viewed in isolation, and it is evident that they are part of a process and movement with international partners and support, as well as anti-democratic and anti-Western principles that the authorities in the Republika Srpska implement without much objection from the opposition and despite the international community's messages which remain limited in scope and effect.

On the other hand, whereas processes in the Republika Srpska tend to suffer substantial setbacks, processes in the FBiH entity are best described as stagnant. Although there are signs of at least partial institutional openness to regulations and policies concerning key human rights issues of LGBTI people, it is clear that **the processes are moving too slowly, and that no significant progress has been made on key matters such as regulating same-sex partnership, improving legal framework for freedom of assembly in the Sarajevo Canton, providing accessible healthcare and regulating administrative issues for transgender people or hate speech.** Some of the bright examples include the **quick and efficient reactions of the prosecutor's offices, such as the one in the Sarajevo Canton,** where there were major threats to the safety of LGBTI people as in the case from the beginning of the year, which will be discussed individually in this report.

However, the most significant progress was achieved in the Brčko District in March 2024, when **the Brčko District Assembly amended the Criminal Code, including in it the criminal offence of public provoking or inciting hatred on the ground of sexual orientation and gender identity.**

Finally, one of the positive aspects is **the work and dedication of certain state institutions in monitoring and promoting the Action Plan to**

Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in BiH, which was adopted at the state level.

The work and development of certain formal and informal collectives that have been active in the territory of BiH in the past period is significant, as stated in the report's final chapter.

However, based on all the information gathered, the coming period will be marked by the need for joint action of all actors dealing with human rights in BiH in order to stop the regressive trends that are gaining more influence on public life in BiH and the human rights of LGBTI people.

NEGATIVE PRACTICES AND HUMAN RIGHTS VIOLATIONS

The initiative to remove gender identity as a prohibited ground from the Criminal Code of the Republika Srpska.

Traditional, right-wing populist, clerical groups and individuals who advocate for a return to patriarchal values and frequently oppose gender equality and LGBTI human rights have been present in BiH for many years. What is new is their recent impact in the Republika Srpska. These organisations were the most vocal in their opposition to the events of the BH Pride March, which are detailed in the 2023 Pink Report. Some of the aforementioned organisations also advocate for the abolition of gender identity as a prohibited ground from the Criminal Code of the Republika Srpska, as discussed in the preceding chapter. These issues are not isolated but rather point to systematic effort aimed at abolishing civilisational standards and achievements made possible by international action in the fields of LGBTI human rights and women's rights.

In March 2024, the caucuses of members of the National Assembly of the Republika Srpska submitted an initiative to delete the term *gender identity* from the RS Criminal Code, and their initiative to amend this Law was included in the RS National Assembly Agenda for 2024. Although the amendments were initiated in 2024, we believe they should be reported on within this reporting period due to their topicality, seriousness and timeliness. 11 years after the term "gender identity" was first mentioned in the CC RS, the authorities in the RS decided that it was necessary to delete to "achieve the integrity of the legal order and systemic harmonisation of legal regulations". True, interventions are required to achieve the stated goal, but not by deleting the term "gender identity", but by incorporating it as a protected characteristic into other laws, as mandated by the BiH Law on Prohibition of Discrimination, with which all applicable laws at all levels must comply.

Although the Constitution of the Republika Srpska does not explicitly include gender identity as a protected ground, legal interpretation indicates that it can be classified as other personal characteristic. Courts in BiH have already demonstrated their willingness to use international sources when defining prohibited grounds that were not included in the core text of the Law.

The right to private and family life is guaranteed by Article 8 of the European Convention on Human Rights. In Bosnia and Herzegovina, the

Convention has the same legal authority as the Constitution, and the state is required to follow its protocols and judgements. The Convention, the RS Constitution, and the Family Law do not specify gender identity as a protected ground. However, Article 14 of the Convention prohibits discrimination with a list of protected grounds that must be interpreted in more detail; the list is not exhaustive and includes any other status.

Therefore, deleting the term “gender identity” from all provisions of the Criminal Code violates the ECtHR and prevents people of different gender identities from receiving legal protection, because no punishment or other criminal sanction may be pronounced on any person for an act which, prior to being perpetrated, has not been defined and described as a criminal offence by law, and for which a punishment has not been prescribed by law.¹

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence obliges Member States to ensure the implementation of the provisions of the Convention without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status. Given that BiH has been a signatory to the Istanbul Convention for ten years and has ratified it without reservations, it is obligated to follow all its provisions, and the request to delete the term “gender identity” is a violation of the Convention.

Although family legislation does not specify gender identity as a protected characteristic, as stated by the NS RS caucuses, this should not be used to justify removing this term from the Criminal Code, but rather to incorporate it into other laws that do not already contain it. People with different gender identities are primarily victims of domestic violence, and it is important that gender identity be recognised as a motive. Otherwise, gender identity could be used to justify perpetrating violence against a family member, rather than as an aggravating circumstance.

Given the foregoing, it is clear that the “arguments” for deleting the term “gender identity” are unfounded; systemic compliance and the integrity of the legal order serve as an excuse for discrimination against a minority group, as well as discrimination and impunity for perpetrators of violence against that group.

1 Article 2, paragraph (2) of the Criminal Code of the Republika Srpska, Official Gazette of the RS, 64/2017, 104/2018 – Decision of the CC, 15/2021, 89/2021, 73/2023 and Official Gazette of BiH, 9/2024 – Decision of the CC BiH, accessed on 11 April 2024, <https://www.paragraf.ba/propisi/republika-srpska/krivicni-zakon-republike-srpske.html>

Shrinking of Space for Activities of Civil Society Organisations and LGBTIQ Activists in the Republika Srpska

The Draft Law on the Special Register and Publicity of the Work of Non-Profit Organisations, better known as the “Foreign Agents Law”, was sent to the National Assembly of the Republika Srpska for consideration at the end of March 2024. Milorad Dodik, President of the RS, frequently makes statements in the media claiming that the law was modelled after the law of the United States of America² and that it complies with all international standards. However, the content of the law clearly indicates that its purpose tends to limit the space for the activities of non-governmental organisations that are not like-minded and are inclined to criticise the current government, which is also the opinion of the Office of the High Representative (OHR) in BiH. In the Draft Law, foreign agents are defined as *non-profit organisations that are financially or in some other way assisted by foreign entities and engaged in political actions or political activities, as well as other activities related to political organisation and activities aimed at endangering democracy, violating the integrity of the Republika Srpska, violating the freedoms and rights guaranteed by the Constitution of the Republika Srpska and inciting national, racial or religious hatred and intolerance*. The preceding definition clearly shows that there is a lot of room for interpretation, especially given the growing influence of the anti-gender movement in the Republika Srpska and patriarchal organisations that believe the introduction of femicide and the term gender violates traditional values, as agreed by the ruling majority. We also recall the President of the RS, Milorad Dodik, announcing the adoption of a law prohibiting members of LGBTI organisations from accessing educational institutions (kindergartens, schools, universities) in early 2023. This implies a ban not only on attending classes, but also on working in these institutions. It is reasonable to expect such a law to cause strong reactions and the action of non-governmental organisations. As a result, those organisations’ efforts in attempting to influence the adoption or amendments to this or other laws to improve the position of LGBTIQ people will undoubtedly be labelled as a violation of the integrity of the Republika Srpska.

FBiH Ministry of Health

We rate the FBiH Ministry of Health’s stance towards advocacy efforts aimed at improving the legal position of same-sex partners and transgender people who want to change the sex marker in their personal documents as negative. Namely, in relation to the specific Conclusion of the

2 “Zakon o ‘stranim agentima’ upućen u Skupštinu Republike Srpske”, slobodnaevropa.org, accessed on 8 April 2024, <https://www.slobodnaevropa.org/a/skupstina-republike-srpske-zakon-o-stranim-agentima/32886285.html>

FBiH Government from June 2023,³ by which the FBiH Government tasked the FBiH Ministry of Justice (FBiH MoJ), the FBiH Ministry of the Interior (FBiH MoI), the FBiH Ministry of Labour and Social Policy (FBiH MLSP) and the FBiH Ministry of Health (FBiH MoH) to submit the names of experts who would work on the drafting of the *lex specialis* FBiH Law on Same-Sex Partnership, according to the information officially available to SOC, only the FBiH MoH did not propose its own expert. Meanwhile, the Government addressed four reminders to the FBiH MoH requesting that an expert proposal be submitted, but to no avail. We further stress that it has taken 10 months for the FBiH MoH to appoint an expert. In this way, the already lengthy and tedious process of working on the legal protection of same-sex partners in the FBiH, which has been ongoing since the end of 2018, is being prolonged unnecessarily, all to the detriment of the protection of the family life of people living in stable same-sex partnerships.

On the other hand, legal gender recognition in the context of the necessary development of regulations for FBiH registers was also obstructed by the FBiH MoH in 2023. In June 2023, SOC proposed to the FBiH MoH the “Ordinance on the Method of Collecting Medical Documentation and Determining Conditions and Assumptions for Gender Change or Life in Another Gender Identity”. We based the proposal on an ordinance from the neighbouring Republic of Croatia, while modifying the text and procedure to comply with the FBiH legal system. Although the Ministry of Human Rights and Refugees of BiH (BiH MHRR) supported SOC’s proposed text of the Ordinance, the FBiH MoH completely ignored the assumption of responsibility for its drafting and adoption. It should be noted that the FBiH MoH received 5 reminders from the FBiH MoI, 1 reminder from the FBiH Government, 1 reminder from the BiH MHRR and 1 reminder from SOC regarding this matter in 2023. The FBiH MoH did not respond to any of the eight reminders, implying that the development of sex marker change regulations has hit a standstill.

We come to the conclusion that protecting LGBTI people’s human rights is not a priority for the FBiH MoH, and it remains unclear whether these areas are deliberately ignored, neglected, and blocked.

Legal Recognition of Gender Conditioned by ‘Complete’ Gender Reassignment and Divorce

Over the last two years, SOC has initiated and provided support to transgender people by providing legal representation in the realisation of sex marker change requests through the legal counselling service, i.e. in

3 Conclusion of the FBiH Government no: 773/2023 of 14 June 2023

proceedings before the competent Ministries of the Interior. The aforesaid requests were denied in two cases: in Sarajevo Canton and Una-Sana Canton. In one case, the explanation was that a trans person must pass the so-called complete gender reassignment procedure in order to change the sex marker in personal documents/registries, whereas in another case, the competent Mol demanded that a trans woman who had previously undergone all medical procedures for gender reassignment and requested a change of marker from male to female divorce her spouse so that the Mol could change her sex marker from M to F.

The first case is currently being decided on an appeal before the FBiH Mol. The second case is in the proceedings of a court-administrative dispute following a lawsuit filed by a transgender woman. Bearing in mind the jurisprudence of the European Court of Human Rights (see judgements *X and Y v. Romania*, Application no. 2145/16 and 20607/16; *S.V. v. Italy*, Application no. 55216/08 and *Hämäläinen v. Finland*, Application no. 37359/09) the right to privacy, i.e. the principles of self-determination and bodily integrity of trans people were violated in both cases. SOC also issued a written reminder in the case of a trans woman whose sex marker change from M to F was conditioned by a previous divorce.

Finally, it is important to note that the competent Mols, as well as the FBiH Mol, have demonstrated complete arbitrariness in their interpretation of the valid FBiH Law on Registry Books and the FBiH Instruction on the Manner of Keeping the Registry Books through previous actions in the procedures for administrative sex marker change of transgender persons. Specifically, they interpreted the gender change articles in the most restrictive way possible, requiring those individuals to go through the so-called complete gender reassignment procedure, which is not explicitly required by any of the aforementioned legal sources. Furthermore, while directly referring transgender people to the practice of the ECtHR and the rights under the ECtHR, the cantonal Mols and FBiH Mol in specific cases completely ignored the constitutional fact that the ECtHR and the practice of the ECtHR are directly applied in BiH and have supremacy over all domestic legal sources, including the FBiH Law on Registry Books and the FBiH Instruction on the Manner of Keeping the Registry Books.

GOOD PRACTICES

Quick and Efficient Reaction of the SC Cantonal Prosecutor's Office Regarding Attacks on Gay Men via Dating Apps

At the end of October 2023, SOC legal counselling team encountered a series of attacks on gay men in Sarajevo. The victims were targeted through the online dating app Grindr, and the attacks were carried out in a consistent manner. The legal counselling team received five independent reports of attacks from gay individuals in Sarajevo, both direct and indirect. The Cantonal Prosecutor's Office of Sarajevo Canton provided exceptional assistance in the investigation, detention, and prosecution of suspects, working directly with police agencies and SOC's legal advisor. The suspects were detained and prosecuted under criminal law thanks to the prompt reaction of the police agencies and CPOSC⁴. The Municipal Court in Sarajevo confirmed the CPOSC indictment⁵ in early February 2024, therefore the case is still proceeding. Given SOC's recent research, which found that LGBTI people have extremely low trust in the police and prosecutor's offices in BiH⁶, the concrete and timely response of the competent institutions in Sarajevo sends a message to the public and the LGBTI community that their rights will be protected if they happen to be victims of criminal offences, and that the perpetrators will face criminal charges. SOC will continue to monitor the progress of this trial in the following period. We believe it is critical that the court considers the fact that the victims were targeted because of their sexual orientation, and that such a factor should be treated as an aggravating circumstance when imposing a sentence.

4 Cantonal Prosecutor's Office of Sarajevo Canton, "Određen pritvor I.M. i B.I. zbog razbojništva i iznude na štetu dvojice pripradnika LGBTI populacije", source: ODREĐEN PRITVOR I.M I B.I ZBOG RAZBOJNIŠTVA I IZNUDE NA ŠTETU DVOJICE PRIPADNIKA LGBTI POPULACIJE (pravosudje.ba)

5 Cantonal Prosecutor's Office of Sarajevo Canton, "Optužena dva muškarca zbog razbojništva i ucjene, žrtve krivičnih djela tri homoseksualne osobe", source: OPTUŽENA DVA MUŠKARCA ZBOG RAZBOJNIŠTVA I UCJENE, ŽRTVE KRIVIČNIH DJELA TRI HOMOSEKSUALNE OSOBE (pravosudje.ba)

6 Emina Bošnjak and Darko Pandurević, Numbers of Equality 3: Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2023 – Analysis of Findings (Sarajevo: Sarajevo Open Centre, 2023), p. 26-28, source: <https://soc.ba/site/wp-content/uploads/2023/12/Brojevi-koji-ravnopravnost-znace-ENG-web-.pdf>

Extended term of the Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in BiH

The state Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina for the period 2021-2024 was adopted in 2022. The structure of the Action Plan is based on human rights standards and areas from the Recommendation CM/Rec(2010)5 of the Council of Europe and includes a list of measures that need to be implemented to ensure that LGBTI people can fully exercise their human rights. Although the Action Plan is effective from 2021, it was adopted in the summer of 2022, therefore the implementation period is less than 18 months. Given that the remaining implementation period is one and a half years, which is an extremely short period for achieving goals and conducting a quality analysis of progress achieved in implementation, **the BiH Council of Ministers, at the proposal of the Ministry of Human Rights and Refugees, extended the Action Plan's implementation period until the end of 2025.**

The plan demonstrates Bosnia and Herzegovina's commitment to contribute to respect, protection and realisation of the rights and freedoms of LGBTI people. The implementation of the Action Plan will contribute to a greater degree of enjoyment of the rights and freedoms of LGBTI people; the fight against discrimination in all spheres of society; capacity building in the institutions; various trainings; and a series of proactive measures intended to raise the awareness of the general public about prejudices and stereotypes in our society. In light of SOC's strategic orientations, the Action Plan will be a tool for continuing to advocate, among others, the legal regulation of same-sex partnerships, combating hate speech, respect for the right to freedom of assembly, legal recognition of gender, healthcare and social inclusion of transgender people and many other issues related to equality of LGBTI people.

SOC will continue to actively monitor and participate in the implementation of the Action Plan, in cooperation with the competent institutions, and we hope that such an important document will speed up the long-pending processes of improving human rights and equality of LGBTI people in BiH.

Amendments to the Criminal Code of the Brčko District and the Regulation of Hate Speech

At the beginning of 2022, the Sarajevo Open Centre started advocacy activities for amendments to the Criminal Code of the Brčko District of BiH to harmonise it with the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). The Istanbul Convention is significant for the protection of LGBTI people because it contains provisions that oblige the signatory states to provide all victims with protection without discrimination on any grounds, including sexual orientation and gender identity. In light of that provision, we requested that the article governing public incitement and incitement to violence and hatred in the Criminal Code of the Brčko District of BiH be amended. The amendment aims to expand the group of protected grounds, as nationality, race, and religion are listed as the only protected characteristics. This norming is especially important considering that the court practice in the trial of Fatmir Alispahić for hate speech against migrants showed that the court only applies the article to the constituent peoples of BiH and does not interpret it in the context of other protected groups living in Bosnia and Herzegovina.

In March 2024, the Assembly of the Brčko District of BiH unanimously adopted amendments to the CC BDBiH, making **sexual orientation and gender identity protected characteristics**.⁷ The introduction or modification of legal norms also requires a certain adjustment period, so it will be necessary to educate all competent institutions and departments on how to recognise hate speech, interpret the provisions, and apply them. Furthermore, the more precise regulation of hate speech in BD BiH and RS puts pressure on the FBiH to propose amendments to the FBiH Criminal Code in a timely manner, because otherwise we will face legal uncertainty and the inability to sanction these criminal offences.

⁷ Article 355a of the BD BiH Criminal Code, Official Gazette of the Brčko District of BiH, 19/2020 – revised text, 3/2024 and 14/2024, accessed on 11 April 2024, <https://www.paragraf.ba/propisi/brcko/krivicni-zakon-brcko-distrikta-bosne-i-hercegovine.html>

PRIORITY MEASURES TO BE UNDERTAKEN

Adoption of the Law on Same-Sex Partnership

We are approaching the 6-year mark since the process of analysing regulations and proposing a legal solution to improve the legal position of same-sex partners in the FBiH began. The process's results and recommendations are clear: issue a *lex specialis* decision, as in neighbouring countries, and establish equality in terms of family rights for same-sex and heterosexual couples.

In June 2023, the FBiH government issued a conclusion mandating specific ministries to appoint representatives to the working group tasked with drafting the law. From June 2023 to the time of writing this report, all line ministries provided expert proposals, with the exception of the FBiH MoH, which was discussed further in the previous chapter Negative Practices.

On the other hand, these processes in the RS and BD BiH have yet to commence, as anticipated by the Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in BiH for the period 2021-2024. Given the current trends in the Republika Srpska, it is almost certain that the initiation of this issue will not be possible in the near future, and that the only option for same-sex couples living in the RS is to file lawsuits that would create pressure and compel the authorities to finally regulate this issue.

More information on the same-sex partnerships in BiH can be found in Chapter IV FAMILY LIFE AND SAME-SEX PARTNERSHIP.

Responsibility of and Imposing Sanction on All Participants in Attacks against LGBTI People and Activists in Banja Luka

The March 2023 attacks on LGBTI still do not have a final legal epilogue⁸. In January 2024, the BH Pride March Organising Committee informed the public that it had filed six complaints to the Institution of the Human Rights Ombudsman of BiH, with only one receiving a recommendation from the Ombudsman. Three complaints were filed against the Ministry

8 Amil Brković, Branko Ćulibrk, Delila Hasanbegović, Dina Bajrektarević and Jozo Blažević, 2023 Pink Report, Annual Report on the State of Human Rights of LGBTI People in Bosnia and Herzegovina, (Sarajevo: Sarajevo Open Centre, 2023), p. 11, source: https://soc.ba/site/wp-content/uploads/2023/06/Pink-report_za-web.pdf

of the Interior of the Republika Srpska for the illegal ban on public gatherings and endangering the safety of participants in public gatherings because they violated their obligation to take security measures, as well as for violating the right to access information, denying the victims the names of the acting police officers who were on duty when the attack occurred, all with the aim to initiate appropriate disciplinary procedures. The Organising Committee filed complaints against hate speech uttered by the president of the Republika Srpska Milorad Dodik and the mayor of Banja Luka Draško Stanivuković, as well as 12 associations from the Republika Srpska that called for a ban on gatherings, resulting in the incitement and justification of violence against members of the LGBTIQ population. In accordance with the Ombudsman's only recommendation pertaining to the access to information and personal data protection, the District Court in Banja Luka accepted the BH Pride March's complaint and ordered the Ministry of the Interior of the Republika Srpska to provide the requested information. The court stated that "The existence of public interest is undeniable, citing the specific case in which police officers stayed passive while observing the violent behaviour, as they allege, of yet unknown individuals". The court also stated that the police officers should have identified the perpetrators, prevented their violent behaviour and any other incident.⁹ This information was also confirmed in the recent announcement of the BH Pride March on the anniversary of the attack on the activists¹⁰. In the following period, the Ombudsman Institution is required to prioritise the resolution of the remaining complaints. On the other hand, the District Court in Banja Luka ruled that the RS MoI should give information on the officers who were on duty during the attack on the activists so that disciplinary proceedings could be taken against them. Furthermore, the District Public Prosecutor's Office in Banja Luka should, as soon as possible, conduct an investigation based on a criminal report to identify unidentified individuals who attacked the activists and file an indictment, after which the court will act further and criminally sanction the perpetrators.

Adoption of the new Law on Peaceful Assembly in the Sarajevo Canton

Freedom of assembly in the Sarajevo Canton should be regulated in accordance with international standards and recommendations from the OSCE, the European Commission, and civil society organisations. The final

9 BH Pride March "Dobijena jedna žalba, šutnja na ostalih pet", source: <https://povorkaponosa.ba/2024/01/dobijena-jedna-zalba-sutnja-na-ostalih-pet/>

10 BH Pride March, "Objava povodom godišnjice napada u Banja Luci", source: <https://povorkaponosa.ba/2024/03/objava-povodom-godisnjice-napada-u-banja-luci/>

working group completed the draft law by the end of 2021, however it was never submitted to the procedure. At the beginning of 2022, representatives of the International Community wrote to Minister Katica, emphasising the importance of harmonising regulations with international standards in the area of freedom of assembly. Since then, nothing has changed. The profession's concerns remain, and they include the regulation of spontaneous gatherings, the imposition of excessive obligations on organisers, managers, and stewards, effective legal remedies, and other issues clearly highlighted in the reports of international and domestic organisations. Vedrana Vujović, a member of the Sarajevo Canton Assembly, addressed an assembly question to the Minister of the Interior of the Sarajevo Canton, along with the explanation provided above.¹¹ The Ministry responded that the Law on Peaceful Public Assembly is expected to be adopted in Sarajevo Canton by November 2024. According to their statements, the Law will be harmonised with international regulations, the provisions of the European Convention on Human Rights, and European principles used in the drafting of European Union legislation in this area.¹²

Legal Recognition of Gender Identity and Coverage of Gender Reassignment Costs through Health Insurance

It is not clear in the existing regulations in BiH whether legal change of sex marker is conditioned by “complete” or “partial” (medical) gender reassignment. It is therefore necessary for BiH, its entities and the Brčko District to regulate legal gender change by adopting laws and other regulations to systematically and comprehensively regulate the procedure for changing the sex marker in personal documents and the unique identity number based on medical documentation that proves the transition stage, thus (even more importantly) **based on trans person’s request and pursuant to the rights on self-determination**, without any need for prior medical intervention, in cases where the person does not want to go through such interventions.

This means that it is necessary to define by law or by-law in the entities and the District what **gender change** is as performed by a health institution, what constitutes **medical documentation** proving gender reassignment, and which is the competent **health institution** to interpret

11 Zastupničko pitanje, Assembly of the Sarajevo Canton, Caucus of Members of the Democratic Front, Member Vedrana Vujović, 26 February 2024, https://skupstina.ks.gov.ba/sites/skupstina.ks.gov.ba/files/3._vedrana_vujovic-pitanje_prema_vladi_ks_min.unutra_posl_vezano_za_slobodu_okupljanja.pdf

12 Odgovor na zastupničko pitanje Vedrane Vujović, Ministry of the Interior, Sarajevo Canton, 25 March 2024, https://skupstina.ks.gov.ba/sites/skupstina.ks.gov.ba/files/v.vujovic_7.pdf

it. Furthermore, it is necessary to recognise **life in a different gender identity** as a ground for administrative gender change procedures.

Trans people can access gender reassignment (hormone therapy, surgical procedures) only abroad, because medical institutions in BiH do not have staff trained to support them in the transition process. The costs of medical transition, borne by trans people themselves, are not being reimbursed by the health insurance system, which further prolongs the transition process and increases financial costs.

In addition to legal gender recognition, it is necessary to enable gender reassignment (hormone therapy, surgical procedures) for trans people in Bosnia and Herzegovina, by stipulating an obligation of medical institutions to establish teams, equip health facilities and train experts who could monitor the process and conduct medical procedures of gender reassignment in BiH, as well as an obligation of the health insurance institute to cover the costs of these procedures.

These steps include continuous and systematic training of BiH medical experts and health workers in the fields of psychology, psychiatry, endocrinology, gynaecology, urology, plastic, reconstructive and aesthetic surgery on adequate, trans inclusive and trans specific provision of services and support to trans people in the transition process.

More information on the position of transgender people in BiH can be found in Chapter V RIGHTS OF TRANSGENDER PEOPLE

I EQUALITY AND ANTI-DISCRIMINATION

International Legal Standards and Obligations of Bosnia and Herzegovina

The documents presented below are the foundation upon which legislation and public policies in BiH are designed or amended, and a standard that should lead to equality and reduce discrimination against LGBTI people in BiH.¹³ Their significance arises from Bosnia and Herzegovina's membership in international and regional organisations, as well as from their position in the BiH legal order.

The principle of non-discrimination defined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the United Nations' International Covenant on Economic, Social and Cultural Rights, Charter of Fundamental Rights of the European Union¹⁴, as well as the ECtHR,¹⁵ refers to LGBTI people. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is particularly relevant for the protection of lesbian, bisexual and transgender women. The Committee on the Elimination of Discrimination against Women (CEDAW) in its Concluding Observations on the Sixth Periodic Report of BiH recommends that Member States ensure the respect of the human rights of lesbian, bisexual and transgender women and ensure that national action plans on gender equality address stigma and discrimination against them in all spheres of life.¹⁶ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) obliges the signatory states to provide victims of violence with protection with-

13 This international framework also applies to other areas and is not explicitly mentioned in other chapters.

14 Article 21 of the Charter of Fundamental Rights of the European Union (2016/C 202/02), Official Journal of the European Union C 202/389 of 7 June 2016, accessed on 11 April 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12016P/TXT>

15 According to Article 2, point 2 of the BiH Constitution, the rights and freedoms provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols are directly applicable in BiH. These acts have the character of constitutional norms and priority over all other acts. The BiH Constitution in Article 2, point 6 additionally prescribes: *"Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 above"*.

16 Recommendation 44, *Concluding Observations on the Sixth Periodic Report of Bosnia and Herzegovina* of the Committee on the Elimination of Discrimination against Women of 8 November 2019, accessed on 11 April 2024, https://arsbih.gov.ba/wp-content/uploads/2020/06/CEDAW-C-BIH-Concluding-Observations-6_AsAdopted.pdf

out discrimination on any ground, including sexual orientation and gender identity.¹⁷ Finally, Recommendation CM/Rec (2010)51 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on the grounds of sexual orientation and gender identity (SOGI), is the most concrete international document defining the assessment and revision of current legislative and other measures, their efficient implementation in the combat against discrimination, the collection and analysis of relevant data concerning discrimination, and ways to protect victims of discrimination.

National Legal Framework

The prohibition of discrimination against LGBTI people is regulated by two systemic laws: **Law on Gender Equality in BiH (LoGE)** from 2003 and **Anti-Discrimination Law (ADL)** from 2009. While LoGE, which prohibits discrimination based on “sexual expression and/or orientation”, is declarative in nature¹⁸ in the context of protecting LGBTI people against discrimination, ADL offers comprehensive protection against discrimination in all aspects of public life, including education, employment, healthcare, access to services, etc. ADL explicitly protects LGBTI people from discrimination by listing **sexual orientation, gender identity and sex characteristics (SOGISC)** among prohibited grounds for discrimination.

Although the ADL stipulates the obligation to harmonise laws at the state, entity and cantonal levels with it, there is still a large number of laws that do not include SOGISC as grounds on which discrimination is prohibited.

Institutional Anti-Discrimination Action

Gender Equality Agency of BiH (GEA BiH)

GEA BiH reported to SOC that no citizens filed complaints concerning discrimination on the ground of sexual orientation, gender identity, or sex characteristics in 2023. Although there were no specific appeals or decisions in such cases, the GEA BiH, in accordance with the LGBTI Action Plan 2021-2024, carried out the following activities:

¹⁷ Article 4, paragraph 3 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence CM(2011)49 of 7 April 2011, accessed on 11 April 2024, <https://rm.coe.int/168008482e>

¹⁸ Although the Law on Gender Equality in BiH (Official Gazette of BiH 16/03, 102/09, 32/10), mentions “sexual expression and/or orientation”, it does not set forth the mechanisms for the protection of LGBTI people from unequal treatment, while the ADL through the protection against discrimination covers all areas of the public and some areas of the private life, and also defines different forms of discrimination, in addition to clear mechanisms of protection.

In December 2023, the GEA BiH held training on the protection of the rights and freedoms of LGBTI people in BiH for 17 civil servants. This training was provided as part of the Civil Service Agency's Civil Service Training Plan.

A round table for relevant actors in the field of the health sector was organised in December 2023. The Draft Thematic Report on LGBTI Persons' Access to Healthcare was presented at the round table, which was attended by representatives from health institutions and NGOs of all levels of government. The final text of the Report was published in March 2024¹⁹. This activity was realised because BiH had previously applied to be the subject of a national thematic analysis carried out as part of the EU Thematic analysis of the implementation of Recommendation (2010)5 of the Committee of Ministers of the Council of Europe on the topic "LGBTI Persons' Access to Healthcare" conducted by the Working Group for SOGIESC as part of the Steering Committee of the Council of Europe on Anti-Discrimination, Diversity and Inclusion (CDADI).

Furthermore, in June 2023, the GEA BiH, through the MHRR BiH, submitted a proposal to the FBIH MoH for the "FBIH Ordinance on the Method of Collecting Medical Documentation and Determining Conditions and Assumptions for Gender Change or Life in Another Gender Identity" drafted by SOC. Due to the FBIH MoH's delayed response, the GEA BiH also sent a reminder in September.

GEA BiH held a series of meetings at the level of BiH Institutions in June, the Government of BD BiH in September, the Government of RS in October and the Government of FBIH in November 2023 to prepare for reporting on the implemented activities of the LGBTI Action Plan.

In May 2023, on the occasion of the International Day Against Homophobia, Biphobia and Transphobia (IDAHOBIT), Dr Sevlid Hurtić, Minister of Human Rights and Refugees of BiH, joined the joint ministerial statement issued by the Government of Iceland.

On 10 and 20 March 2023, GEA BiH released two public statements condemning citizens' behaviour towards participants in LGBTI rights events in Banja Luka. In addition, on 31 March 2023, a public statement was made in honour of Transgender Day of Visibility, followed by an announcement on 17 May 2023, in honour of IDAHOBIT.

During the reporting period, GEA BiH made multiple media appearances to raise awareness among the BiH public about the need to improve the position of LGBTI people in BiH.

19 Gender Equality Agency of BiH, "Obavještenje za javnost - Izvještaj Vijeća Evrope o zdravstvu za LGBTI osobe u BiH", source: <https://arsbih.gov.ba/obavjestenje-za-javnost-izvjestaj-vijeca-evrope-o-pristupu-zdravstvu-za-lgbti-osobe-u-bih/>

Given that GEA BiH is a member of the European Governmental LGBTI Focal Points Network and the Council of Europe's Working Group on SOGI, the Agency attended regular semi-annual sessions in Iceland in May 2023 and Strasbourg in November 2023. GEA BiH uses these opportunities to inform partners about the situation of LGBTI people in BiH, current activities, exchange international contacts and experiences on best practices, and gather information on recent achievements in the realisation of LGBTI people's rights in the countries of the Council of Europe.

In August 2023, the GEA BiH sent the Information on the period of validity of the LGBTI AP to the BiH Council of Ministers, proposing that the BiH Council of Ministers extend the time of validity of the LGBTI AP until the end of 2025²⁰.

In November 2023, an initiative was submitted to include, among other things, the commemoration of 8 September as the date of the first BH Pride March in 2019 in the Proposal for the Amendment to the Proposal for the Program Marking the Important Dates in the Field of Human Rights in the BiH institutions for the year 2024. The initiative was launched by SOC.

FBiH Gender Centre (GC FBiH)

During the reporting period, the GC FBiH reported to SOC that it had not received any SOGI-related complaints. During November 2023, a joint meeting was held with the GEA BiH to implement the LGBTI AP at the FBiH level. The meeting was attended by the FBiH Institute for Public Health, the Sector for Legal Affairs and the Department for Normative-Legal Affairs at the FBiH Mol, FBiH MoH, the FBiH Employment Institute, the FBiH Ministry of Education, the FBiH Ministry of Culture and Sports, the FBiH Civil Service Agency, JPCT FBiH and the Council of Europe. It was agreed that the GEA would develop a report template, and that the GC FBiH would handle coordination at the FBiH level.

A number of activities were carried out under the project "EU for Human Rights and Anti-Discrimination", the beneficiary of which is the GC FBiH, to strengthen the capacity of relevant institutions in order to ensure adequate implementation of the LoGE BiH. Training modules and accompanying manuals have been developed for conducting gender equality and gender-based discrimination trainings for local self-government units, protection providers, and vulnerable groups. Two workshops were held on the topic of educating trainers from local self-government units, with a total of 51 participants. Two-day workshops on gender-based discrimination were held in 8 local self-government units for a total of 187 participants. In addition, 4 workshops for vulnerable groups were held to recognise and promote the possibility of protection against discrimination for 71 participants.

²⁰ See the Chapter "Good Practices"

Six anti-discrimination trainings were held for 216 judges and prosecutors in collaboration with the JPCT FBiH. Furthermore, the Analysis of Regulatory Compliance with LoGE BiH and ADL BiH was prepared, providing an overview of regulatory compliance progress. This initiative will serve as the foundation for the GC FBiH's future regulatory harmonisation efforts.

GC FBiH participated in the conference on the position of LGBTI people "Numbers of Equality" organised by SOC.

Gender Centre RS (GC RS)

GC RS has not received any citizen complaints regarding discrimination based on SOGISC. At the end of 2023 and the beginning of 2024, this RS Government institution faced serious attacks on its integrity from so-called "anti-gender movements"²¹. Serbia-based Lawyer's Office Radić requested that the RS Constitutional Court evaluate the constitutionality of the name "Gender Centre"²² and declare the RS Government's Decision on the Establishment of the GC RS unconstitutional²³.

During the reporting period, the **Institution of the Human Rights Ombudsman of BiH** received five citizen complaints about discrimination on the ground of sexual orientation, while there were no complaints about discrimination based on gender identity or sex characteristics. In 2023, no Recommendations were issued for these cases. In terms of education, the Institution claims to have attended meetings related to the implementation of the LGBTI AP, as well as LGBTI rights promotion activities such as the promotion of SOC's publication "Numbers of Equality".

None of the BiH entities provides independent and continuous training for the judiciary representatives with a focus on LGBTI human rights, although this is one of the recommendations made by the Ombudsman Institution in its 2016 Special Report²⁴ as an activity²⁵ that should be implemented

21 See the Chapter "Negative Practices"

22 Roditelji za prava djece, "Inicijativa za ocjenu usavnosti naziva Gender Centra Republike Srpske, source: <https://roditeljizapradjece.org/inicijativa-za-ocenu-ustavnosti-naziva-gender-centra-republike-srpske/>

23 Aleksandar Lazić, Stanje Stvari, "Advokatska kancelarija Radić: Prijedlog Ustavnom sudu RS da proglasi neustavnom odluku o osnivanju "Gender centra" iz 2001. godine" source: <https://stanjestvari.com/2023/12/13/ak-radic-protivustavnost-odluke-o-osnivanju-gender-centra-rs/>

24 Jasminka Džumhur, Nives Jukić, Ljubinko Mitrović, Alma Suljić, Predrag Raosavljević, Hajrija Adžamija, Vanja Dandić and Dejan Kozomara, Special Report on the Rights of LGBT People in Bosnia and Herzegovina, (Banja Luka, Institution of the Human Rights Ombudsmen of Bosnia and Herzegovina, 2016), p. 15, source (in BCS):https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2016110413333704bos.pdf

25 BiH Council of Ministers, 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina (Sarajevo:

according to the recently adopted 2021-2024 Action Plan to Improve the State of Human Rights of LGBTI People in BiH. However, it should be noted that as part of the 2023 Initial Training and Professional Development Program, the JPTC FBiH included the following trainings that indirectly include LGBTI rights:

Specific aspects of access to justice from the perspective of members of vulnerable groups (children, people with disabilities, Roma, LGBTI people, marginalised categories of women) in the implementation of JPTC FBiH and JPTC RS.

Members of vulnerable groups as witnesses in the proceedings in the implementation of JPTC FBiH and HJPC BiH²⁶.

Although the state did not commit to organising trainings with a focus on LGBTI rights, **SOC continued to train judges and prosecutors on LGBTI human rights in cooperation with the Judicial and Prosecutorial Training Centre of the Federation of Bosnia and Herzegovina (JPTC FBiH) and the Judicial and Prosecutorial Training Centre of the Republika Srpska (JPTC RS).** A two-day training in FBiH was held in May 2023, and another training in cooperation with JPTC RS was held in October 2023. The topics were designed in such a way that judicial office holders of BiH are provided with a comprehensive training on the protection of LGBTI people applying the existing mechanisms of legal protection. The training combined criminal law and anti-discrimination protection of LGBTI people in civil proceedings. Furthermore, the trainers referred to the relevant national and European case law on the protection of human rights of LGBTI people.

Public Policies to Combat Discrimination of LGBTI People

As we previously reported, the 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina was adopted at the end of July 2022.

The consistent implementation of this document will contribute to combating societal prejudices and stereotypes towards LGBTI people. Furthermore, the Action Plan represents Bosnia and Herzegovina's response to obligations arising from numerous international documents, but also to pre-accession obligations in the process of joining the European Union.

BiH Council of Ministers, 2022), p. 11, source: <https://arsbih.gov.ba/wp-content/uploads/2023/06/AP-LGBTI-ENG-27.09.pdf>

26 FBiH Centre for Judicial and Prosecutorial training, Program početne obuke i stručnog usavštavanja za 2023. godinu (Sarajevo: JPTC FBiH, 2023), p. 35, 54-55, source (in BCS): <http://fbih.cest.gov.ba/images/doclink/PROGRAM-2023-KONACAN.pdf>

After the adoption of the Action Plan, GEA BiH organised its public presentation on 20 October 2022 in the Parliamentary Assembly of BiH. The Agency distributed the Action Plan to the institutions of Bosnia and Herzegovina that are recognised by the Action Plan as being able to contribute to its implementation, each within the framework of its competences. In addition, GEA BiH sent letters to the competent institutions to include the implementation of the relevant activities provided for in the Action Plan and pointed out that it is available for cooperation and assistance in the implementation of the relevant activities – by way of joint planning, coordination, necessary trainings, promotional activities or similar. GEA BiH also made preparations for individual meetings with institutions and entity gender centres that will be organised in the first half of 2023.

There was no GAP adopted in 2023 that included LGBTI people's human rights at the cantonal level.

Documented Cases

According to SOC's 2023 research on the LGBTI community, 193 out of 401 respondents stated that they experienced discrimination, accounting for 48.13%. Of the 48.13% of respondents who reported experiencing some type of discrimination, 91.16% were discriminated against because of their sexual orientation, and 7.73% because of their gender identity/expression. The most common type of discrimination faced by respondents was harassment based on LGBTIQ identity, which occurred in 43.88% of cases. According to the findings of this research, the majority of respondents faced discrimination at school (29.33%), with many also experiencing discrimination at work (8.21%), police stations (4.69%), health institutions (4.99%), universities (12.02%), and hospitality establishments (13.20%). 12.61% of respondents reported discrimination in the LGBTI community. Furthermore, some people faced discrimination during the employment process. Others highlighted discrimination in society, online, within the family, and in their local community. The research discovered that up to 90.63% of respondents decided not to report discrimination. The answers to the question of why respondents did not report discrimination indicate deep fears and obstacles faced by the LGBTIQ community. Some of the key factors include distrust in officials involved in the proceedings, fear of identity exposure, and a lack of information about available assistance and reporting procedures. The length of court proceedings, potential financial costs, fear of retaliation, and concern about the reaction of family and friends are among reasons for not reporting discrimination. In 9.38% of cases when respondents decided to report discrimination, they mostly decided to seek support from civil society organisations (35%) and from the Human Rights Ombudsman Institution (15%), indicating a low level of trust in judicial institutions and bypassing civil proceedings as a mechanism for proving and combating discrimination.

Out of 20 reported cases of discrimination, only six were considered by the court. Of these, one process has been completed, and five are still ongoing, which points to the inefficiency and sluggishness of the judicial system in BiH in implementing anti-discrimination legislation and ensuring protection for LGBTI people²⁷.

In 2023, SOC documented five discrimination complaints from LGBTI people on the grounds of sexual orientation and gender identity.

One case pertains to the ban on illuminating the City Hall in Sarajevo in rainbow flag colours. Two cases concern incitement to discrimination, while the other two involve harassment and discrimination while providing hospitality services.

Although the above data indicate a small number of discrimination cases, it is impossible to derive definitive conclusions based on these numbers, given that the number of LGBTI people willing to engage in lawsuits is very small, which also applies to other marginalised groups protected by the ADL.²⁸

In April 2022, after a total of 2 years and 6 months of first instance court proceedings in a case initiated by Sarajevo Open Centre as one of its strategic litigations, **the first judgement in BiH was passed confirming discrimination on the ground of sexual orientation, gender identity and sex characteristics.**²⁹ The first instance judgement was passed in favour of the plaintiff SOC against former cantonal assembly member Samra Ćosović-Hajdarević of the SDA political party. The acting judge ruled, among other things, that *“the defendant’s statement encouraged the denial of LGBTI people’s constitutional rights in a way that prevents them from acting as equal citizens in society, or to segregate as community ... and at the same time encouraged and issued a segregation order... which also constitutes harassment on the ground of sexual orientation, gender identity and sex characteristics...”*³⁰ Since August 2022, this case is being handled at the second instance upon the defendant’s appeal.

At the time of writing this report, SOC is pursuing another strategic litigation related to market discrimination in access to products and services.

27 See Emina Bošnjak and Darko Pandurević, Numbers of Equality 3, Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2023 – Analysis of Findings, (Sarajevo: Sarajevo Open Centre, 2023), p. 16-21, source: <https://soc.ba/site/wp-content/uploads/2023/12/Brojevi-koji-ravnopravnost-znace-ENG-web-.pdf>

28 Litigations must be initiated independently, without the ex officio actions of the institutions.

29 Municipal Court in Sarajevo, Judgement no. 65 0 P 801297 19 P of 4 April 2022

30 See Municipal Court in Sarajevo, Judgement no. 65 0 P 801297 19 P of 4 April 2022, p. 18-19.

The case is being appealed at the Cantonal Court in Sarajevo after the court ruled in the first instance that there was no discrimination. Although anti-discrimination procedures require urgent decision-making, this case is still being handled at the second-instance, 4 years and 9 months later. The judiciary's passivity and slowness, as well as the executive bodies' lack of proactivity in combating discrimination against LGBTI people, have resulted in community distrust in human rights institutions (73.32% of LGBTI respondents do not trust the judiciary), which has an impact on the low number of reported cases of discrimination.³¹

In 2023, SOC filed two additional discrimination lawsuits. One refers to discrimination due to the denial of the right to freedom of assembly in connection with the provision of services, while the second lawsuit refers to incitement to discrimination, harassment and segregation of LGBTI people by the President of the RS. These cases are in the decision stage from March and October 2023.

The table below summarises SOC's discrimination cases over the past three years. These figures indicate cases monitored by SOC in public or reported by LGBTI people via the internal system of documenting LGBTI human rights violations. Given the lack of trust that LGBTI people have in institutions, there has yet to be a single final court judgement determining discrimination. As a result, based on this table, it is impossible to respond to the trends and frequency of discrimination over time. However, it is possible to conclude that discrimination exists and is documented in the vast majority of the areas covered by the law.

31 See Emina Bošnjak and Darko Pandurević, Numbers of Equality 3, Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2023 – Analysis of Findings, p. 27

	2021	2022	2023	TOTAL
GROUND^{32, 33}				
Sexual Orientation	4	9	4	17
Gender Identity	1	1	1	3
Sex Characteristics	0	0	0	0
AREA				
Education	0	1	0	1
Access to Goods and Services	0	3	2	5
Employment and Labour Relations	1	3	0	4
Health	1	0	0	1
Other ³⁴	03	3	3	9
TOTAL FOR THE YEAR	5	10	5	20

Table 1. SOC Data on SOGI-based Discrimination

32 Some of the documented cases are related to both sexual orientation and gender identity, which is why the number of cases per ground is higher than the total number of documented cases per year.

33 Sex characteristics (relating to intersex people) have been included in the ADL since 2016, although no discrimination cases have been registered on this basis as of yet.

34 This chapter refers to other, distinct areas specified by the Law, such as public authorities, housing, social protection, goods and services for the public and public places, and the conduct of economic activities and public services.

Guidelines for Further Action

1. Implement the activities provided for in the 2021-2024 Action Plan to Improve the State of Human Rights of LGBTI People in BiH in a consistent and prompt manner;
2. Implement relevant recommendations in international and national documents³⁵ by improving laws and bylaws, and include LGBTI people's rights and needs in all public policies at all levels of government;
3. Introduce LGBTI-specific modules in future trainings for judges and prosecutors;
4. In addition to legal and policy solutions, it is necessary to adopt internal acts and develop internal mechanisms of all legal entities to address cases of discrimination on the grounds of SOGIESC;
5. Create an accountability mechanism for the judiciary and other bodies that do not implement the principle of urgency in all alleged discrimination-related proceedings, including cases on the grounds of SOGIESC.

³⁵ Recommendation CM/Rec(2010)5 of March 31, 2010 of the Committee of Ministers to Member States on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity; Special Report on the Rights of LGBTI Persons in Bosnia and Herzegovina, Institution of the Human Rights Ombudsman of BiH, Banja Luka, 2016; Provisions of the Anti-Discrimination Law (Official Gazette of BiH, 59/09) and provisions of the Law and Amendments to the Anti-Discrimination Law (Official Gazette of BiH, 66/16).

II HATE CRIME AND INCITEMENT TO HATRED

Legal Framework

All three criminal codes, FBiH, RS and BD, recognise hate crimes (in BD, hatred is considered an aggravating circumstance) and protect LGBTI people and other social groups who are typically the target of such crimes.

The criminal offence of incitement to hatred and violence, however, is regulated differently in the Criminal Code of the Republika Srpska (CC RS) and the Criminal Code of BD BiH than in the Criminal Code of the Federation of BiH (CC FBiH). Public incitement to violence and hatred in the RS and BD BiH is thus prohibited on the grounds of *nationality, race, religion or ethnicity, colour, sex, sexual orientation, disability, gender identity, origin or any other characteristic*; while in the FBiH, it is limited exclusively to *inciting intolerance or hatred on national, ethnic and religious grounds*.

As a result, the CC FBiH should be amended, as was done in the RS and BD BiH, to harmonise laws and provide proper protection to LGBTI people as well as members of other groups who are typically the target of such crimes.

Institutional Action

In 2023, Sarajevo Open Centre continued with the positive practice of appointing contact prosecutors at prosecutor's offices by holding trainings on discrimination, hate speech and hate crimes against LGBTI people. In 2023, SOC held a joint two-day training for prosecutors of DPPO Banja Luka, DPPO Doboje, DPPO Istočno Sarajevo, DPPO Bijeljina and DPPO Prijedor. **Following the training, four contact persons were appointed at the aforementioned prosecutor's offices**, with the exception of DPPO Prijedor, to receive reports of incidents and hate crimes. In 2023, a contact person at the prosecutor's office in BD BiH was also appointed. As a result, by the end of 2023, SOC had appointed a total of 16 contact persons in all prosecutor's offices in FBiH, BD BiH and RS, with the exception of DPPO Prijedor, who is expected to be appointed soon. The willingness of prosecutor's offices of FBiH, RS and BD BiH to send their prosecutors on LGBTI human rights training and sensitise them to working with this marginalised group exemplifies the proactivity and commitment to constantly improve and professionalise their work that judicial institutions should nurture. This type of training is an important step toward building trust between the judiciary and LGBTI people. The institutionalisation of this

cooperation through the appointment of a contact person, more specifically a contact prosecutor for hate crimes against LGBTI people in these cantonal prosecutor's offices, is a mechanism that should restore LGBTI people's trust in the judiciary.

The cooperation of JPCT FBiH, JPCT RS and SOC continued last year through two-day trainings for prosecutors and judges on discrimination and hate crimes against LGBTI people held in May and October 2023.

In 2022, the High Judicial and Prosecutorial Council of BiH (HJPC BiH) prepared an Analysis of hate crime cases and cases of inciting hatred at courts in BiH. The analysis pointed to the need for systematic collection of data on hate crimes, and improvement of identification of and reporting on such cases, and, accordingly, the improvement of the CMS/TCMS system. More specifically, a technical solution is being proposed, to enable the marking of data on protected characteristics – grounds for committing hate crimes in BiH, both in CMS and in TCMS.

However, according to the latest official information from the HJPC BiH, the TCMS system has not yet been updated to collect data on hate crimes based on SOGI, nor do they have an accurate timeline for when the updating process will be completed and implemented by prosecutor's offices. Given the appointment of a new FBiH Minister of the Interior in 2023, the Sarajevo Open Centre re-addressed the initiative to the FBiH Ministry of the Interior (FBiH MoI) in 2022 with the aim of training cadets of the FBiH Police Academy (PA FBiH) for the ranks of police officer and junior inspector, as part of the regular PA FBiH curriculum. FBiH MoI approved the initiative, and in agreement with the Police Academy, a training program for cadets of the FBiH MoI Police Academy on topics of "Hate speech and hate crimes" and "Public assembly" was successfully implemented. The training lasted 49 hours and had a total of 347 participants, including 45 junior inspectors and 302 police officers.

In 2022, three contact persons were appointed at the Police Administration in two Ministries of the Interior: Sarajevo and Tuzla Cantons, as well as the Police of Brčko District of BiH, as part of a joint project between the European Union and the Council of Europe.

Documented Cases at the Prosecutor's Offices and the Police

In 2023, the Sarajevo Open Centre officially filed four reports for hate crimes. The first report was filed with the competent police station for domestic violence against a minor gay man because of his sexual orientation.

This case was resolved by involving the competent centre for social work. The second report related to threats SOC received for organising *iftar* for the LGBTI community in April 2023. The police forwarded the case to CPOSC for further procedure. The third report dealt with the threats received by SOC due to the Drag Show organisation as part of the 2023 Kvirhana Festival. The fourth report related to attacks on gay men carried out using the Grindr application, which we covered in the “good practices” chapter of this report.

SOC also received the Order on Non-Conduct of Investigation related to the criminal offence of “endangering security” from Article 183 of the CC FBiH as a result of the report SOC filed in 2022.

In its Order, the competent prosecutor’s office informs SOC that “after analysing the complete case file, the prosecutor’s office assessed that the specific case did not meet the characteristics of a criminal offence under Article 183 of the FBiH Criminal Code. The criminal offence in question is committed if a person endangers the security of a number of persons by serious threat of attacking upon their lives or bodies, or in that way causes anxiety among citizens. The threat in this criminal offence must have a qualified form in the sense that it must be a serious threat of carrying out an attack upon the life or body of a person. When considering the existence of this criminal offence, the seriousness of the threat should be assessed according to all the circumstances of the specific case, taking into account the circumstances in which the threat was made, the manner, the content of the threat, the motives, and the previous relationship between the perpetrator and the victim, but above all, the seriousness of the threat should be assessed according to the criterion of objective fitness for the person to whom the threat is addressed to cause feelings of fear, insecurity and anxiety. Therefore, the consequence of the criminal offence in question is endangering the sense of security, endangering the right to an undisturbed and peaceful life, i.e. creating feelings of anxiety and fear in the passive subject. The subjective aspect of a criminal offence is determined by the perpetrator’s intent.

What should be considered a serious threat is a factual question, and the assessment is made in each specific case; however, in order to determine and conclude that it is a serious threat, a set of facts must be established that provide the necessary intensity to the spoken words, in addition to simple verbal expression.”

For the purposes of this chapter of the report, SOC sent 17 requests for access to information to the competent prosecutor’s offices in FBiH, RS and BD BiH. We received 16 responses, which can be divided into the following categories:

Three prosecutor's offices stated that they prosecuted cases where the victims were LGBTI people. The **Cantonal Prosecutor's Office of the Una-Sana Canton** states that *"the case number T01 0 KT 0044022 23 was formed based on the report of the Sarajevo Open Centre v. Ć.L. due to the criminal offence Endangering Security from Article 183, paragraph 2 of the FBiH Criminal Code."* **The Cantonal Prosecutor's Office of the Sarajevo Canton** stated that it is processing *"cases numbers T09 0 KTAKK 0185281 and T09 0 KTA 0185307 23, which are currently in the phase of verifying the allegations from the reports; case number T09 0 KTN 0187349 23, which is being proceeded against an unknown perpetrator and is in the phase of verifying the allegations from the report, while an indictment for the case number T09 0 KT 0189622 23 has been filed and confirmed by the Municipal Court in Sarajevo, and the main hearing is currently in progress."* **The District Public Prosecutor's Office in Banja Luka** states *"that it is acting in three cases:*

- In the case related to the attack on activists in Banja Luka on 18 March 2023. The case is in progress and is being investigated against multiple unknown individuals for the committed criminal offence Violent Behaviour under Article 362 of the CC RS. Several people were questioned in the aforementioned case, but the perpetrators of the criminal offence have not been identified so far. The acting prosecutor ordered the PA Banja Luka police officers to take the necessary measures and actions to identify the perpetrator.

- In the case of the report filed by the Association of Independent Creators and Activists "Geto" from Banja Luka and the Association Network for Building Peace from Sarajevo, this Prosecutor's Office on 29 August 2023 issued an Order on Non-Conduct of Investigation against the President of the Republika Srpska, Milorad Dodik, and the Mayor of Banja Luka, Draško Stanivuković, for the criminal offence of Publicly Inciting and Inflaming Violence and Hatred from Article 359, paragraph 1 of the CC RS and the criminal offence of Infringement of the Equality of Citizens from Article 139, paragraph 1 of the CC RS, because it is obvious from the report and accompanying documents that the reported offence is not a criminal offence. The complainants did not file a complaint against the prosecutor's decision.

- In the case based on the Sarajevo Open Centre's report filed on 23 March 2023, in connection with the event of 18 March 2023 at the football stadium Borac. The case is currently being investigated against an unknown person for the criminal offence Publicly Inciting and Inflaming Violence and Hatred from Article 359 of the CC RS."

The trainings on LGBTI human rights were attended by employees of the Prosecutor's Office of the Brčko District of BiH, the Cantonal Prosecutor's Office of the Una-Sana Canton, the Cantonal Prosecutor's Office of the Tuzla Canton, the Cantonal Prosecutor's Office of the Bosnian-Podrinje Canton – Goražde, the Cantonal Prosecutor's Office of the Sarajevo Canton,

the District Public Prosecutor's Office in Banja Luka and the District Public Prosecutor's Office in Doboj.

Furthermore, the Prosecutor's Office of the Brčko District has appointed a contact person for LGBTI people who have been victims of criminal offences. The Prosecutor's Office of the Una-Sana Canton has appointed prosecutor Nizam Šarić as a contact person, same as the Cantonal Prosecutor's Office of Zenica-Doboj Canton which appointed prosecutor Manuela Smajić in 2021.

Prominent Cases of Hate Speech

In 2023, SOC filed four reports about hate speech, so that the relevant institutions/agencies might take the necessary measures to adequately respond to the disputed content. The first three reports were sent to the BiH Football Federation, the RS Ministry of the Interior and DPPO Banja Luka on different legal grounds for the same incident of hate speech that occurred on 18 March 2023 at the Banja Luka City Stadium during the 23rd round of the Premier League of Bosnia and Herzegovina match between the Football Club Borac and the Football Club Leotar. The misbehaviour that happened at the above-mentioned match implies that the fans of the Football Club Borac, "Lešinari", chanted "kill the faggot" and raised a banner reading "stop the disease". Until the moment of writing this report, no decision has been made on the reports, despite the fact that the MoI RS and DPPO Banja Luka reported conducting investigations. The fourth report refers to anti-LGBTI stickers that were pasted at the entrance to the building where SOC offices are located at the end of June 2023.

In 2023, the Sarajevo Open Centre documented **20 cases of incidents and criminal offences motivated by prejudice on the grounds of SOGI.**

Of the 20 cases documented from January to December 2023, four occurred in public places, three referred to domestic violence, and one involved violence at the university.

	2021	2022	2023	TOTAL
GROUND				
Sexual Orientation	12	13	14	39
Gender Identity	0	0	2	2
SOGI ³⁶	1	0	4	5
TOTAL	13	13	20	46
TYPE OF HATE CRIME				
Domestic Violence	2	3	2	7
Peer Violence	0	2	0	2
Threats	8	4	6	18
Other	3	4	12	19
TOTAL	13	13	20	46

Table 2. SOC Data on SOGI-based hate crime

36 Sexual orientation and gender identity.

Guidelines for Further Action

1. Amend the FBiH Criminal Code and expand the provisions on incitement to hatred and violence so that it includes SOGIESC as protected grounds;
2. With the aim of fighting homophobia and prejudice within the institutions, continuously train and inform prosecutors, judges, police officers and civil servants on hate crimes, incitement to hatred and violence against LGBTI people;
3. Improve cooperation between the police and the judiciary in the prosecution of hate crimes against LGBTI people and systematically collect data on hate crimes on the grounds of gender and SOGIESC;
4. Introduce LGBTI inclusive modules in curriculum in law schools and police academies, in the permanent and specialist programs for police officers' training and civil service exams;
5. Develop a program to combat peer violence in primary and secondary schools, which will include both homophobic and transphobic violence, as well as programs to promote tolerance and create an inclusive education system;
6. Train higher education/academic employees to be more sensitised when working with LGBTI people, as well as to recognise, condemn and avoid hate speech directed at LGBTI people.

III FREEDOM OF ASSEMBLY AND ASSOCIATION

Legal Framework

In addition to the BD Law on Peaceful Assembly, which was adopted in July 2020, laws on peaceful assembly of the Una-Sana and Zenica-Doboj Cantons, as well as Canton 10, were also adopted. A public discussion is currently taking place in Central Bosnia Canton over a Draft Law on Peaceful Assembly, which should also be in line with international standards. Some progress has been made since the last reporting period. However, the current legal framework (seven cantonal laws and the RS Law on Public Assembly) regulating this area is still inconsistent with international standards, non-harmonised, and offers different definitions and interpretations of basic terms such as the concept of public assembly, types of public assembly, space provided for public assembly, the content of applications and the granting of permits for public assemblies, the responsibility of organisers and competent authorities, and the decision-making process for public assemblies. Such a legal framework makes it difficult for BiH citizens to exercise their right to freedom of assembly and other constitutionally and legally guaranteed rights.³⁷

Institutional Action

In addition to tendencies to harmonise the legal framework in FBiH³⁸ and efforts by civil society and representatives of the international community to encourage amendments to the law in this area and improve cooperation between institutions and civil society, 2023 was also marked by restrictions on freedom of assembly and a shrinking of space for civil society organisations. The Republika Srpska introduced criminal penalties for defamation and disclosure of personal and family circumstances. This limits freedom of expression, and thus freedom of assembly as a form of public expression of opinion. The RS Draft Law on the Special Registry and Publicity of the Work

37 The right to freedom of assembly in BiH is regulated by a number of laws and bylaws: the Constitution of BiH, constitutions of the entities and cantons, the Statute of Brčko District, laws on freedom of assembly of the entities and cantons, but is also protected by international documents ratified or adopted by BiH into its legal system, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms.

38 During 2018, the FBiH MoI worked on a preliminary draft law on public assembly at the level of the Federation of BiH, which the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) assessed as restrictive and made recommendations for its improvement. However, the process was stopped due to the delay in establishing the government and no concrete activities have continued to improve the draft.

of Non-Profit Organisations, known in the public as the “Foreign Agents Law”, poses a threat to civil society organisations funded by other states, as their advocacy activities, including peaceful assembly, will be classified as political activities directed against the RS.

When it comes to the Law on Public Assembly and the Law on Public Events of the Sarajevo Canton, after the SC Government appointed a working group to work on the draft law, and after the amendments to the legislation were announced 2021³⁹, even in 2022, by the time of writing this Report, the two draft laws are still not in the process of public consultation, and the legal framework regulating this area has not yet been improved.

In September 2023, the Government of Una-Sana Canton sent the Draft Law on Freedom of Peaceful Assembly to the parliamentary procedure, which was adopted in January 2024⁴⁰. In 2023, the Government of Zenica-Doboj Canton⁴¹ established and the Assembly adopted the Law on Peaceful Assembly⁴². A public debate on the Law is currently underway in the Central Bosnia Canton⁴³. At the time of writing this report, information on the adoption of the Law on Peaceful Assembly in Canton 10 has been published. All three cases include laws that address the exclusive right to freedom of assembly, whereas public events will be governed by a separate law. According to information available on the cantonal governments’ official websites, these are laws that are harmonised with international and European Union standards.

Documented Cases

In March 2023, the BH Pride March announced a public meeting in Banja Luka, respecting the legal deadlines. On the day of the event, they were informed that the meeting was prohibited due to “negative reactions from

39 In 2021, SOC submitted a Proposal for Amendments to the Draft Law on Peaceful Public Assembly in the Sarajevo Canton, requesting removal of restrictions related to assembly locations, the expansion of prohibited grounds for incitement to hatred (including SOGISC), simplification of the reporting procedure, the designation of a single body responsible for the entire procedure, and the exclusion of provisions on penalties since they are prescribed in other regulations.

40 Draft Law on Freedom of Peaceful Assembly of Una-Sana Canton, accessed on 11 April 2024, (available in BCS) https://vladausk.ba/v4/files/media/pdf/64fb14f4022333.94680907_zakon%20o%20slobodi%20mirnog%20okupljanja%20%281%29.pdf

41 Draft Law on Peaceful Assembly of Zenica-Doboj Canton, accessed on 11 April 2024, (available in BCS) https://zdk.ba/images/attachments/02_Nacrt_Zakona_o_mirnom_okupljanju.pdf

42 “Misija OSCE-a u BiH pozdravila usvajanje Zakona o mirnom okupljanju”, fena.ba, accessed on 11 April 2024, <https://fena.ba/article/1558270/misija-osce-a-u-bih-pozdravila-usvajanje-zakona-o-mirnom-okupljanju>

43 “Saopštenje sa 37. sjednice Vlade SBK - 2024.g”, <https://www.sbk-ksb.gov.ba/bs/sjednice/saopstenje-sa-37-sjednice-vlade-sbk-2024-g.html>,

the population and citizen associations who openly resented the planned meeting of the LGBTIQ community activists in Banja Luka". The police have warned that there is a possibility of a gathering of football fan groups, and that they will be unable to appropriately secure the meeting.⁴⁴ It is clear that this is a violation of the right to freedom of assembly, which was preceded by inciting statements by the President⁴⁵ of the Republika Srpska and the Mayor of Banja Luka, Draško Stanivuković⁴⁶. Such statements ultimately led to attacks against LGBTIQ activists. A group of about 30 men attacked them in front of police officers who refused to take any action to protect them. Following the attack, the BH Pride March's legal team filed six complaints to the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina. Only one complaint against the RS Ministry of the Interior has received a response as of yet, while responses to the remaining five complaints are pending. Three complaints were filed against the RS Ministry of the Interior for illegally prohibiting public assembly, endangering the safety of participants in public assembly, and violating the right to access information, with the aim of initiating disciplinary proceedings. Complaints were also filed against Milorad Dodik and Draško Stanivuković for hate speech. Complaints were also filed against 12 associations that advocated for a ban on assembly and for speech inciting violence. In connection with other complaints, the BH Pride March Organising Committee was not informed about the current status of the investigations.⁴⁷

A drag show was held as part of the Kvirhana festival program, which drew the attention of some public figures, given that the queer art festival was held in the History Museum in Sarajevo. Haris Zahiragić, a member of the Sarajevo Canton Assembly, criticised the cantonal authorities and the History Museum for allowing *men, dressed as women, to sing, dance and perform in a public institution of the first category*.⁴⁸ The Anti-Dayton movement demanded that the festival be banned, calling the event itself a mockery and humiliation of the History Museum.⁴⁹ Although the festival

44 "Saopštenje Organizacionog odbora Bh. povorke ponosa povodom zabrane događaja u Banjoj Luci", accessed on 11 April 2024, <https://povorkaponosa.ba/2023/03/saopstenje-organizacionog-odbora-bh-povorke-ponosa-povodom-zabrane-dogadaja-u-banjoj-luci/>

45 Mladen Vujić, "Dodik: Očekujem da organi RS-a onemogućće aktivnosti u okviru *Povorke ponosa*", n1info.com, accessed on 11 April 2024, <https://n1info.ba/vijesti/dodik-ocekujem-da-organi-rs-onemoguće-aktivnosti-u-okviru-povorke-ponosa/>

46 Dragan Maksimović, "Zabrana projekcije filma *Prajd* u Banjaluci", accessed on 11 April 2024, <https://www.dw.com/bs/zabrana-projekcije-filma-prajd-u-banjaluci/a-65021203>

47 "Objava povodom godišnjice napada u Banjoj Luci", accessed on 11 April 2024, <https://povorkaponosa.ba/2024/03/objava-povodom-godisnjice-napada-u-banja-luci/>

48 "(VIDEO) HARIS ZAHIRAGIĆ (SDA): U HISTORIJSKOM MUZEJU SHOW U KOJEM MUŠKARCI, OBUČENI KAO ŽENE, PJEVAJU, PLEŠU", accessed on 11 April 2024, <https://crna-hronika.info/video-haris-zahiragic-sda-u-historijskom-muzeju-tranvestit-pjeva-seku-aleksic/512128>

49 "ALIKKOVIĆ: ZAUSTAVITE PONIŽAVANJE HISTORIJSKOG MUZEJA! POD HITNO!", accessed on 11 April 2024, <https://antidayton.com/alickovic-zaustavite-ponizavanje-historijskog-muzeja-pod-hitno/>

was held despite their efforts, it is important note that hateful statements such as these may in the future have an impact on the enjoyment of the right to freedom of assembly, as we see is already happening in the Republika Srpska.

In 2022, Sarajevo Open Centre was denied the right to temporarily use the public space of the Sarajevo Children's Square, located in front of the Aria Mall. This was not an isolated denial, considering that SOC was also discriminated against in previous years compared to all other legal or natural persons who have been granted the right to temporarily use the Square. As a result, in March 2023, SOC filed a lawsuit in this case, which is currently being decided in first instance.⁵⁰

Guidelines for Further Action

1. Clearly define that laws/provisions on the temporary use of public space (e.g., Law on Temporary Use of Public Spaces in Sarajevo Canton) cannot apply to peaceful assemblies of citizens and citizens' associations in BiH and that such public assemblies in public spaces cannot be dependent on permissions of institutions/other legal entities occupying such public space;
2. Improve the existing legislation to clearly define the differences between the protection of citizens' right to freedom of assembly, and commercial public assemblies and events; and to prevent a shift of responsibility for securing the events from competent ministries of the interior to private agencies, whose engagement presents an additional financial burden on organisers of non-profit assemblies;
3. Adopt a law at the FBiH level that uniformly regulates public assembly for all cantons, as there are no constitutional impediments for doing so, and harmonises solutions at all government levels to ensure equal enjoyment of the constitutional right throughout BiH's territory. The uniform law at the FBiH level should include the following solutions, based on the following principles:
 - The law should clearly state that the authorities must protect all types of assemblies, as long as they are peaceful. It should also define the principle of proportionality, meaning that banning or restricting an assembly must be

⁵⁰ See the Chapter Discrimination, Documented Cases of this Report

proportional to the cause and based on valid, justifiable grounds – i.e., allow the possibility of banning/restricting assemblies only on locations where they pose a real and immediate threat to the well-being and safety of a large number of people or property, all the while respecting the principle of proportionality;

- Banning an assembly should be possible only in a limited number of cases, i.e., when there is a real danger; the law should not list individual places that are particularly likely to result in a ban (consistent implementation of the proportionality principle);
- The law should define efficient and effective legal protection procedure to contest the ban of public assembly, particularly through emergency court proceedings;
- The law should clearly stipulate that only ministries of the interior need to be notified when planning a public assembly to simplify the notification procedure and free organisers from the obligation of seeking permission from other relevant authorities in cases when the assembly takes up roads or public spaces in front of institutions/other legal entities.
- Sanction persons in institutions responsible for restricting or banning public assemblies;

Decisions on banning the public assembly should be issued in a timely manner so that the organisers have enough time to file an appeal, which will be decided by another independent body, not the same authority that banned the assembly.⁵¹

51 *The Enjoyment of Freedom of Peaceful Assembly in BiH: Monitoring Observations of the OSCE Mission to Bosnia and Herzegovina*, OSCE Mission to Bosnia and Herzegovina, 2021, accessed on 25 April 2024, https://www.osce.org/files/f/documents/a/7/500554_0.pdf

IV FAMILY LIFE AND SAME-SEX PARTNERSHIP

Legal Framework

The relationships between same-sex partners and their partnerships are not regulated in any administrative unit in BiH (FBiH, RS, BD). In this way, LGBTI people are unable to claim their constitutionally guaranteed rights to personal freedom and safety, private and family life and home, to starting a family, protection of property, or freedom of movement and residence. The obligation of BiH to regulate same-sex partnership arises from BiH membership in the Council of Europe and the decisions of the European Court for Human Rights. Several recommendations by the Council of Europe bind the member states to respect the private and family life of every individual and to enable the rights of same-sex partnerships that would be at least legally equal to the rights of heterosexual extramarital couples.

Institutional Action

The process of analysing and proposing regulations to improve the legal position of same-sex partners in FBiH has been ongoing since 2018. The process itself, its activities and results were chronologically presented in previous Pink Reports and we refer the readers to them⁵². It is noteworthy that in October 2022, the FBiH Government adopted a conclusion that it was duly informed of the interdepartmental working group's conclusions and tasked the FBiH MoI to organise a public debate in cooperation with the FBiH Ministry of Justice and the FBiH Ministry of Labour and Social Policy to ensure a "broader consensus" regarding family life of same-sex partners. On 9 December 2022, a public debate was held with the support of the European Commission and the Council of Europe, attended by 120 participants. At the end of December 2022, the FBiH MoI submitted to the FBiH Government a report on the conducted public debate.

On 14 June 2023, the FBiH Government adopted Conclusion no. 773/2023 which included the FBiH MoI Report on the Public Debate. With the same Conclusion, the FBiH Government tasked the FBiH MoJ, FBiH MLSP, FBiH MoI and FBiH MoH to submit proposals from experts who participated in the drafting of the *lex specialis* "FBiH Law on Same-Sex Partnership". From June 2023 until the moment of writing this report, all line ministries

⁵² See 2019 Pink Report, 2020 Pink Report, 2021 Pink Report, 2022 Pink Report and 2023 Pink Report

except the FBiH MoH submitted expert proposals⁵³. Given that the process of adopting the FBiH Law on Same-Sex Partnership has been ongoing since the end of 2018, new requests from same-sex partners emerged in FBiH, relating to recognition of parental care and the rights of children of same-sex partners. For this reason, we emphasise that the future Law that will regulate the family life of same-sex partners must also contain provisions that will refer to children, because it is evident that already at this moment there are justified requests to adequately resolve this issue.

According to SOC research in 2023, out of 401 respondents, 24.69% stated that they are in a long-term, stable emotional relationship with a partner of the same sex, while the majority stated that they are not currently in such a relationship. Of the total number of respondents who are in a long-term and stable emotional relationship, 33.86% already live with their partner, and 39.37% plan to do so in the near future. More than half of the respondents, 59.12%, stated that they do not want to have children, but a significant percentage, 38.36%, stated that they do want to have children in their same-sex union. When asked if they would still enter into a life partnership or same-sex union in BiH if they were able, more than half of the respondents (53.31%) said yes. It is interesting to note that 33.73% of respondents were unsure whether they would enter into a life partnership in that situation, which prompts consideration of the level of information and knowledge of the rights that the regulation of life partnerships within the community itself entails. Given the legal and social invisibility of same-sex partnerships, both in society and within the LGBTIQ community, there is room for more information on this topic, as well as the need for LGBT people in their environment and in safe spaces to be in the company of same-sex couples who can talk about their experiences, as well as the concrete consequences of the lack of legal regulation on their daily lives. Given the lack of legal regulation and the ability to recognise same-sex partnerships formed outside of BiH, 81.23% of respondents have not entered into this type of union outside of BiH. However, six respondents said they had formed a life partnership outside of BiH. Regardless of their personal views on certain aspects of life unions, the vast majority of respondents, 88.06%, believe that same-sex partnerships should be legally regulated in BiH.⁵⁴

Documented Cases

In 2023, **SOC received 5 inquiries related to same-sex partnership/marriage**. One inquiry concerns a same-sex couple who married in Ireland.

⁵³ See “Negative Practices” in this Report

⁵⁴ See Emina Bošnjak and Darko Pandurević, Numbers of Equality 3, Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2023 – Analysis of Findings, p. 39-42

One of the spouses is a BiH citizen who was curious about whether his marriage could be recognised in BiH. The second inquiry came from a lesbian couple who wanted to know where in the FBiH they could sign a Lifelong Support Agreement. The third inquiry came from a lesbian couple living in Sweden. One of the partners is a BiH citizen who needs a letter of support to obtain a residence permit. The fourth inquiry concerns a BiH couple who live in Denmark and are planning to get married. The fifth inquiry refers to a lesbian who entered into a same-sex marriage in the USA but is unable to change her surname in BiH based on her marriage certificate.

Presently, and as far as SOC is informed, four cases⁵⁵ are active in BiH courts related to LGBTI people seeking rights that arise directly from issues of same-sex partnership and family life. Two cases are pending before the BiH Constitutional Court, while the other two are pending before the Cantonal Courts. They refer to the issue of inheritance, recognition of a same-sex partnership concluded abroad, and granting of citizenship to a child of same-sex mothers. These are just four examples in which SOC is directly involved, and which concern aspects of life that are fully regulated for all citizens of BiH but LGBTI.

Guidelines for Further Action

1. Accelerating the existing legislative procedures in the FBiH, while expanding the scope of rights to include matters related to children in same-sex partnerships;
2. Initiate legislative proceedings for the adoption of a legal solution on same-sex partnerships in the RS and BD, so that same-sex couples receive equal treatment throughout BiH (in line with Activity 2.1 of the LGBTI Action Plan).

⁵⁵ Names and details are known to SOC.

V RIGHTS OF TRANSGENDER PEOPLE

Legal Framework

The procedure to register gender change in the public registers and personal documents in the administrative-territorial units of Bosnia and Herzegovina (entities, cantons, District) is inefficient, vague, potentially degrading for transgender people and does not respect the rights to self-determination, privacy and bodily integrity of transgender people.

It is not clear in the existing regulations in BiH whether legal change of sex marker is conditioned by “complete” or “partial” (medical) gender reassignment. Namely, no law or by-law in the entities or the District defines what **gender change** is as performed by a health institution, what constitutes **medical documentation** proving gender reassignment, and which is the competent **health institution** to interpret it. Furthermore, it is necessary to recognise **life in a different gender identity** as a ground for administrative gender change procedures.

The current practice and the lack of regulation of gender change leads to a conclusion that gender change procedures in personal documents can only be carried out after “complete” medical gender reassignment, which implies reassignment surgeries of primary and secondary sex characteristics, often including sterilisation of trans people, i.e., deprivation of reproductive functions.

Trans people can access gender reassignment (hormone therapy, surgical procedures), or gender affirming medical services only abroad, because medical institutions in BiH do not have staff trained to support them in the transition process. The costs of medical transition, borne by trans people themselves, are not being reimbursed by the health insurance system, which further prolongs the transition process and increases financial costs.

Institutional Action

In terms of legal recognition of gender identity and gender affirming healthcare, no concrete institutional actions have been undertaken in the past period.

None of the SC GAP’s planned measures and activities for the period 2019-2022 has been implemented. These are the following measures: the development of a Guide for Health Professionals on the Best Treatment

of Transgender and Intersex Persons and the adoption of the Rulebook on Gender Reassignment in Sarajevo Canton Medical Facilities. Sarajevo Canton is currently working on a new GAP because the previous one has ceased to be valid. At the cantonal level, no new GAP was adopted in 2023 that would address, among other things, the human rights of transgender and gender diverse people.

In 2023, **SOC submitted a proposal to the FBiH Ministry of Health to address the issue of legal gender recognition including a proposal for the wording of the by-law that needs to be adopted, as well as other acts that need to be amended**, as well as an explanation of each legal intervention. The subject matter is the FBiH Ordinance on the Method of Collecting Medical Documentation and Determining Conditions and Assumptions for Gender Change or Life in Another Gender Identity. The said Ordinance should clearly define the medical documentation submitted by trans people who are in the process of transition as evidence in sex marker change procedures, as well as the competent health institution that will interpret and verify the documentation. Furthermore, the Ordinance defines *life in another gender identity* as a basis for changing the sex marker, regardless of the medical aspects of the transition, while respecting the person's right to self-determination. Another proposal is to amend the FBiH Instruction on the Manner of Keeping the Registry Books, which establishes the health authority's competence when interpreting the necessary documentation, and also recognises *life in another gender identity*.

Until the moment of writing this report, the FBiH MoH had not considered SOC's proposals or responded to reminders from the FBiH Mol, the BiH Ministry of Human Rights and Refugees or the FBiH Government.⁵⁶

In this context, it is important to mention the FBiH Ministry of the Interior's engagement and positive action on this matter, namely its insistence on its resolution. Given that SOC sent a reminder to the FBiH Government regarding the legal gender recognition, and the fact that the FBiH Mol was faced with a lawsuit in 2023 from a transgender person who was denied the right to change the gender marker in their personal documents, this ministry submitted an initiative to the FBiH Ministry of Health in March 2023 to develop sex marker change regulations in the FBiH. In April 2023, they also communicated the same information to the FBiH Government with the aim of instructing the FBiH MoH to draft a regulation defining the method of collecting medical documentation in the process of changing the sex marker, as well as the conditions and assumptions for changing the sex marker, and the health authorities authorised to give an opinion on the sex marker change. Given that the FBiH Mol did not receive a concrete response from the FBiH MoH, the FBiH Mol sent five reminders in

⁵⁶ See more in the Chapter Negative Practices and Human Rights Violations

2023, holding the FBiH MoH accountable and emphasising the importance of developing regulations on legal gender recognition in the FBiH.

In the sex marker change procedures that SOC monitors/supports, the need to define the competences of **ethics committees at the cantonal ministries of health**, which, according to the proposals for legal solutions advocated by SOC, should and could be the competent institutions for interpreting the medical documentation of trans people, thereby facilitating the work of the cantonal MoHs in sex marker change procedures, i.e. evaluating evidence in the procedure. Previous procedures were inconsistent in terms of decision-making. In some cases, the Ethics Committee of the SC Ministry of Health issued an opinion that a trans person who underwent “complete” gender reassignment did so “according to the rules and procedures of the medical profession and that there are no medical-ethical obstacles” to changing personal documents. However, in 2023, this same body refused to issue an opinion for a transgender person who had also undergone the so-called complete medical gender reassignment, stating that the SC MoH Ethics Committee is not competent and that in this particular case, the expertise of the competent institution is required, and that such a decision is based on instructions from the Ministry of the Interior of Sarajevo Canton. Furthermore, the EC claimed that it lacks the authority to determine whether the gender change was carried out in accordance with medical profession norms because the medical gender reassignment procedure was performed abroad. Despite the objections of the transgender person’s lawyer on the inconsistency of this body in reference to her client and previous cases in which the same body ruled, the SC MoH EC issued a positive opinion on the transgender person’s gender change.

This example also emphasises the necessity of urgent adoption of the solution at the FBiH, RS, and BD BiH levels, as proposed by SOC.

SOC’s Action on Healthcare

In 2023, SOC continued to organise training for health workers, including a training session for family physicians in April that was attended by employees from Sarajevo Canton and Tuzla Canton community health centres. This training is crucial since primary healthcare is the first step and the place where trans people seek support and further referrals, and family physicians guide them through the transition process. In the coming period, SOC plans to continue educating the health sector in BiH about the perspectives of gender affirming healthcare, as well as to build a network of doctors and mental health experts who will be available to transgender and gender diverse people in their daily clinical/professional activities.

SOC attended the Congress of the European Society for Sexual Medicine in February 2024, where online training on gender affirming healthcare was presented. The training was organised by SOC in cooperation with Pharma Press, the E-medikacija portal, and trans health experts from Croatia and Serbia, as we discussed in the previous edition of the Pink Report.

Social Reality

In 2023, SOC conducted research on the needs and challenges that LGBTIQ people face in everyday life in BiH. The research found that transgender and gender diverse people continue to be legally and socially invisible, with restricted access to healthcare, education, employment, legal gender recognition, and other fundamental rights. The research provides insight into their needs related to medical gender reassignment (gender affirming healthcare) and changing the sex marker in their personal documents.⁵⁷ An important fact is that 58.33% of respondents agree that a third sex/gender category should be added to personal documents in BiH.⁵⁸

The research findings clearly indicate the need for more education and social information to ensure support and rights for people who identify as trans, gender diverse, or non-binary.

Documented Cases

Through the legal counselling service, SOC receives inquiries from LGBTI people about their human rights. **In 2023, 16 trans people contacted SOC with various inquiries related to their gender identity.** Three people asked for information about the possibilities of starting the transition (medical gender reassignment) and about sensitised medical experts in BiH. One trans person contacted us with a question about the validity of BiH driver's licence in Germany, and 11 trans people were interested in the possibility of legal sex change (marker) in personal documents. One trans person reported discrimination based on gender identity to SOC.

57 More statistical data available in the research.

58 Emina Bošnjak and Darko Pandurević (ed.), Numbers of Equality 3, Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2023 – Analysis of Findings (Sarajevo: Sarajevo Open Centre, 2023), p. 46, source: <https://soc.ba/site/wp-content/uploads/2023/12/Brojevi-koji-ravnopravnost-znace-ENG-web-.pdf>

Guidelines for Further Action

1. BiH, its entities and Brčko District must regulate legal gender change by enacting laws and other regulations that will systematically and comprehensively regulate the procedure for sex marker change in personal documents and the unique identification number based on a trans person's request and self-determination, without any need for prior medical intervention; that is, remove sterilisation requirements in line with established human rights standards.
2. Cantons that adopted GAPS should implement activities and goals related to transgender and intersex people, including the development of a Guide for Health Professionals on the Best Treatment of Transgender Persons.
3. BiH should implement the measures from the 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina concerning the medical and legal aspects of gender affirming care/procedures, including: "analysis and promotion of existing modalities of gender reassignment for BiH nationals (medical and administrative aspects), and training of professionals in healthcare, education, social welfare, labour and employment on the rights and freedoms of LGBTI people".
4. Adopt and implement laws and/or bylaws which would define the duties of medical institutions to form teams, equip health facilities and train professionals who could monitor the process and perform medical gender affirming care procedures in BiH, as well as the obligation of the health insurance institute to cover the costs of these procedures from the health insurance budget.
5. Health workers should provide gender-sensitive health services and ensure the improvement and promotion of sexual and reproductive health of trans and gender diverse people.
6. Some of the legislation that should be amended according to advocacy groups (trans people, their parents and SOC staff) and would lead to the introduction of healthcare for trans people in the BiH health system are the following:
 - Laws on healthcare and health insurance,

- Decisions on establishing priority vertical healthcare programs,
 - Decisions on determining the basic package of health rights,
 - Regulations on the conditions and procedure for referring insured persons for treatment abroad,
 - Orders on healthcare standards and norms from mandatory health insurance (the so-called “Blue Book”),
7. Apply the latest ICD-11 revision in the BiH healthcare system and remove the mental health diagnosis (pathologisation) and requirements of psychiatric evaluation in order to start hormone treatment, according to the gender incongruence definition of all trans-related conditions (ICD Chapter – Conditions related to sexual health),
 8. Access to all health services and rights should be based on the principles of bodily integrity, self-determination and informed consent, with an individualised and flexible approach based on the specific needs and circumstances of each person, while ensuring the protection of the right to privacy (e.g. not keeping a register of trans persons, not to ask for any data that is not necessary for the realisation of the service, care, rights etc.).

VI HUMAN RIGHTS OF INTERSEX PEOPLE

Legal Framework

BiH explicitly protects intersex persons in its anti-discrimination legislation by prohibiting discrimination on the ground of sex characteristics. However, there is still a lack of clear medical guidelines and procedures on practice regarding the management of intersex variations in all healthcare facilities in BiH. This lack includes the absence of guidelines and protocols intended to prevent gender “normalisation”, “gender assignment” or sex-altering surgical or other interventions on the sex characteristics of an infant/child solely for the purpose of conforming their appearance to normative definitions of male or female, even when the child’s health is not at risk.

An important document of the Parliamentary Assembly of the Council of Europe, of which BiH is a member, is Resolution 2191 (2017) – Promoting the human rights of and eliminating discrimination against intersex people that comprehensively deals with the rights to physical integrity and bodily autonomy, in terms of both health treatment and civil status – legal gender recognition. It calls on member states to end the pathologisation and harmful medical treatment, including surgeries and other medical treatment, and to protect intersex people against discrimination on the grounds of sex characteristics.

It is also important to mention the General Policy Recommendation no. 17 on preventing and combating intolerance and discrimination against LGBTI persons, issued by the European Commission against Racism and Intolerance – ECRI. This Recommendation is the first Council of Europe document of its kind which describes how countries should protect intersex people and implement the protection ground of sex characteristics. It includes a ban on intersex genital mutilation (IGM), ensuring that medical interventions are not justified by social attitudes, ensuring support to intersex people who have undergone non-consensual interventions, and considering compensation to those who were previously subjected to these interventions.

A major progress at the level of the United Nations took place with the adoption of the UN Resolution of the Human Rights Council⁵⁹ (HRC) in April 2024. The resolution encourages states to work to realise the enjoy-

59 Resolution available at: <https://www.oieurope.org/united-nations-addresses-the-human-rights-of-intersex-persons-in-ground-breaking-resolution/>

ment of the highest attainable standard of physical and mental health for intersex people. It also requests the Office of the High Commissioner to prepare a report – to be discussed at the Human Rights Council in September 2025 – examining “discriminatory laws and policies, acts of violence and harmful practices, in all regions of the world,” and looking at “best practices including legal protection and remedies” for persons with innate variations in sex characteristics.

Also, work on a new Council of Ministers recommendation on the topic of intersex equality at the level of the Council of Europe was announced in early 2024, and it is expected to be completed by 2025.

Institutional Action

By the time this report was completed, no guide for health workers on the best treatment of transgender and intersex people had been developed, nor had steps been taken to regulate medical and legal procedures in the case of intersexuality. These measures are defined by cantonal Gender Action Plans. Sarajevo Canton is currently working on a new GAP because the previous one has ceased to be valid. At the cantonal level, no new GAP was adopted in 2023 that would address, among other things, the human rights of intersex people.

In BiH, there is a lack of data on the number of newly born intersex babies, both in municipal registry offices and health institutions. Public health institutes collect and publish data on certain intersex conditions/variations, but they are not complete and do not include all variations/medical diagnoses.

Social Reality

SOC released **Research on the Rights of Intersex Children in the Healthcare System of BiH** in 2020 in response to a lack of research and analysis of the human rights situation of intersex persons in the BiH healthcare and legal systems.⁶⁰

Analysis of responses from health institutions and facilities (ministries of health, health insurance institutes, clinical centres) reveal that the concept of intersexuality is not easily understood by health professionals in BiH, and that there are no records on the number of children born with intersex characteristics or clear, medically established procedures/guidelines

60 Vanja Burić, *Bodies that Transcend the Binary 2: Research on Human Rights of Intersex Children in the Healthcare System of Bosnia and Herzegovina*. (Sarajevo: Sarajevo Open Centre, 2020) source (in BCS): <https://soc.ba/tijela-koja-nadilaze-binarnost-2-istrazivanje-o-pravima-interspolne-djece-u-zdravstvenom-sistemu-bosne-i-hercegovine/>

for addressing cases of intersexuality, and that it is also unclear to what extent are parents/guardians of intersex children aware of the risks of certain medical treatments.

The research, and particularly the lack of cooperation between competent health facilities and SOC in its implementation, raised the question of how well the principle of the child's best interests is upheld, i.e., the child's right to bodily integrity during medical treatment. It is unclear and debatable what happens when intersexuality is discovered later in a child's development (adolescence), and when and to what degree adolescents are involved in making decisions about their bodily integrity. Other methods of providing psychological support to intersex children and their parents remain unknown. Another conclusion of the research is that medical staff is not adequately educated on all aspects of treating intersex children/persons.

Guidelines for Further Action

1. Establish cooperation between civil society organisations and health facilities and professionals as well as continue work on informing and sensitising on the intersex issues, along with the revision of medical classifications and abandoning obsolete and offensive terms such as *hermaphrodite* and *pseudohermaphrodite*.
2. Sarajevo Canton and other cantons who have adopted GAPs should implement their activities, including clear guidelines for health workers on how to treat transgender and intersex persons in BiH, as well as legal regulation of medical and legal proceedings in cases of intersexuality. Cantons that have not adopted GAPs or have not included the protection of intersex persons in existing ones should do so.
3. All administrative-political units in BiH should ensure that health workers provide gender-sensitive healthcare services as well as sexual and reproductive health improvement services to intersex persons and all other groups/persons.
4. It is necessary to provide transparent and accessible information on procedures and medical treatment in cases of intersex birth, and to prohibit unnecessary surgical procedures and medical sex 'normalisation' treatments in health facilities without the intersex person's full and informed consent, until they can understand their significance and consequences, except in situations where objective circumstances require urgent

medical intervention, which should be clearly defined in the procedures.

5. Ministries of health should develop treatment procedures/ guidelines that health workers will be required to follow.
6. In collaboration with non-governmental organisations dealing with these issues, ministries of health should develop a training plan for health workers on the protection of intersex human rights in the healthcare system, and conduct their training in accordance with the highest global standards in the field of trans, intersex, and gender diverse persons.
7. Clinical centres in BiH should systematically and continuously educate and sensitise medical staff involved in the medical treatment of intersex children.
8. Ensure continuous inclusion of administrative bodies (ministries of health) and bodies responsible for human rights protection (Ombudsman) in the protection of intersex persons' human rights, self-determination and bodily integrity.

VII ASYLUM

Legal Framework

The legal framework has been largely harmonised with the EU standards. Law on Asylum and Law on Aliens, adopted in 2015 and 2016 respectively, are mostly transposing provisions of the relevant EU directives. However, the provision stating SOGI as particularities of a certain social group, thus as ground for exile and asylum-seeking, has been left out. Same-sex partnerships have also not been recognised as grounds for temporary residence in BiH nor are they recognised by law in the provisions regarding family reunification.⁶¹

Social Reality

Despite the fact that regulations of many EU countries mark BiH as a *safe third country of origin*, **LGBTI people from BiH continue to decide to leave and seek protection from persecution due to their sexual orientation and gender identity in the EU and North American countries.** A safe third country of origin is a legal presumption that there is a certain level of functionality of institutions, rule of law, and existence of legal mechanisms for the protection of citizens from any kind of persecution, including SOGIESC grounds.

LGBTI people from BiH decide to seek asylum due to psychological difficulties, psychological and physical violence, discrimination in employment and social rejection as a result of their sexual orientation or gender identity.

In addition to the foregoing, in recent years, Bosnia and Herzegovina has been the route for people on the move travelling from the Middle East, parts of Africa, Pakistan, Afghanistan and other countries to EU countries. Among the mentioned migrant population, there is also a number of LGBTI people.

So far, a number of LGBTI people on the move have been documented in BiH. The majority of them are in transit through BiH, and just a few decide to stay. The issues they face relate to housing, legal support and information, as well as stigmatisation and violence they, as a particularly vulnerable group, experience from other people on the move. Precisely

61 For more information on this topic, refer to the 2018 Pink Report - Chapter VII - Asylum

for these reasons, SOC was contacted by LGBTI people on the move who sought help mostly for housing, to avoid accommodation in camps.

Russia's aggression against Ukraine in February 2022 influenced, among other things, the rise in LGBTI asylum seekers from Russia and Ukraine on the Balkan refugee movement route. These people, especially with Russian citizenship, are mostly present in the neighbouring Republic of Serbia due to the absence of entry restrictions there. A certain number of persons seeking asylum on the ground of SOGISC from Russia have recently appeared in Bosnia and Herzegovina – we will certainly address this topic in future reports.

Documented Cases

In 2023, SOC received 12 inquiries from LGBTI people about asylum opportunities for themselves and/or their partners in EU countries or the US. In 2 cases, SOC issued Letters of Support.⁶² The remaining 8 cases were general inquiries about the possibilities of obtaining asylum in Western countries as well as in BiH. Specifically, of the total 12 cases, 7 cases related to BiH nationals seeking asylum in Western countries, while in the remaining 5 cases foreign nationals sent inquiries for asylum in BiH and asylum abroad.

Given that official institutions responsible for asylum in BiH do not disaggregate data based on SOGI, SOC turned to the Association *Vaša prava*, which has a contract with the Ministry of Security of BiH regarding the provision of free legal aid to persons seeking asylum in BiH. We received the following information from *Vaša prava*:

A total of 5 persons sought asylum in Bosnia and Herzegovina on the ground of SOGI in 2023. Of these, as many as 3 citizens of the Russian Federation (2 persons left the territory of BiH and one person received subsidiary protection in BiH). The remaining two cases were initiated by 1) a citizen of Iran who subsequently withdrew from the procedure and left BiH, and 2) a citizen of Serbia/Kosovo who currently has an asylum seeker status.

⁶² Letter of support serves as additional proof that LGBTI people submit in the process of obtaining asylum. This letter contains information on the state of human rights of LGBTI persons in Bosnia and Herzegovina, with a specific reference to such a state under the circumstances of the case for which the letter is issued.

Year of advice sought and ground for seeking asylum	2021	2022	2023	TOTAL
Sexual Orientation	3	9	10	22
Gender Identity	1	1	2	4
Total Number of Cases	4	10	12	26

Table 7. SOC data on cases of seeking help in the asylum process

Failure to provide safe accommodation for LGBTI people, as extremely vulnerable individuals in this situation, as well as failure to provide clear and understandable instructions on how to initiate an administrative asylum procedure proved to be the biggest problems for all LGBTI people who want to seek asylum in BiH.

Guidelines for Further Action

1. Amend the BiH Asylum Law to explicitly include gender and SOGISC as grounds for asylum seeking and possible persecution reasons;
2. Recognise same-sex partnerships in the Law on Aliens i.e., family reunification as a ground for granting temporary residence to partners of BiH citizens;
3. Implement Activity 2.3. "Adopt guidelines for cases of LGBTI people as asylum seekers and train officials" from the 2021-2024 Action Plan to Improve the State of Human Rights of LGBTI People in BiH;
4. Provide dignified and efficient treatment and safe accommodation for LGBTI asylum seekers in BiH, with special attention to the fact they belong to a highly vulnerable group under risk of violence in accommodation centres;
5. Amend the Rulebook on the content, method of keeping and use of official records on foreign nationals (Official Gazette of BiH, 51/16) so that the Asylum Sector of the Ministry of Security of BiH keeps SOGI-based records of asylum seekers.

VIII SOCIAL PERCEPTION OF LGBTI PEOPLE IN BOSNIA AND HERZEGOVINA

In 2023, Sarajevo Open Centre conducted and presented the results of the research entitled *Acceptance from a Distance: Attitudes towards Homosexual, Bisexual, Trans and Intersex People in Bosnia and Herzegovina*. It was the first comprehensive survey on public perception of LGBTI people and key issues related to LGBTI human rights in the past 10 years, producing significant findings.

One of these findings is that direct contact and personal knowledge of LGBTI people undoubtedly contribute to changing attitudes and awareness about LGBTI issues. By comparing the findings of this research with the previous one, a positive trend was noticed with respect to number of respondents who know an LGBTI person in their environment: as many as 45.6% of respondents stated that they personally know an LGBTI person.⁶³ We include here parts of the research.

This research also indicates a significant change in the attitudes of the general population with regards to sexual orientation and gender identity. 35.3% of respondents consider LGBTI people to be sick, while 41.8% believe that LGBTI people are not sick and that they should not be treated. The research reveals that as many as 33.1% of respondents would support LGBTI people from their immediate environment, after coming out, while 28.1% would accept them, but would try not to talk about it.

34% of respondents still find it unacceptable for their family member to be an LGBTI person, and this resistance increases when it comes to their own children. Specifically, 43% of respondents find it unacceptable for their child to be LGBTI. However, the majority of responses referred to non-violent persuasion and talks, with 53% of them trying to convince the child that being LGBTI is wrong.

There are still different perspectives in BiH society regarding LGBTI topics, and attitudes towards LGBTI people range from positive and neutral to negative and conflicting. Only 11% of respondents have extremely negative attitudes, and only 13% of them believe that LGBTI people need therapy. All these findings confirm the necessity of educating and sensitising the public.

63 E. Bošnjak, *Acceptance from a Distance: Attitudes towards Homosexual, Bisexual, Trans and Intersex People in BiH*, Sarajevo Open Centre, Sarajevo, 2023.

Furthermore, we present here several other key findings of the research:

- 42.5% of respondents would support a political party even if it supports the rights of LGBTI people, while 28.5% would refuse to do so.
- About 60% of respondents stated it is largely acceptable for them to have their neighbour, colleague at university or work, or their boss be LGBTI.
- Only 25.5% of respondents support legalisation of same-sex partnerships. However, answering specific questions about health insurance, right to visit one's partner in the hospital, right to inherit property and pension, obligation to support one's partner, they expressed support ranging from 70% to 88%.
- 26% of respondents support the right of same-sex couples to adopt children.
- 38.7% believe that the views of religious communities should be respected when laws and policies related to the human rights of LGBTI persons in BiH are enacted.

IX ACTIVITIES IN LOCAL COMMUNITIES ON THE PROMOTION OF LGBTI RIGHTS

Activities of Organisations Advocating for LGBTI Rights in the Republika Srpska

In 2023, the LGBTI community in the Republika Srpska was additionally exposed to discrimination, hatred and violence. Although in recent years there have been numerous homophobic incidents that included very hostile comments by public figures about LGBTI people and led to an increased number of criminal offences of violence, during March there were several incidents that, through media lynching, directly led to a violent incident motivated by hatred against LGBTI community. In Banja Luka, a group of about thirty hooligans attacked the activists of the BH Pride March Organising Committee who tried to organise a public event for the LGBTI community, which was banned by the police a few hours prior to its start. The ban was issued immediately after the request to ban it by the President of the Republika Srpska, Milorad Dodik, as well as the Mayor of Banja Luka, Draško Stanivuković, who explained that he advocates the preservation of patriarchal values, while the Bishop of the Serbian Orthodox Church Fotije called on the faithful to “stand up against Sodom and Gomorrah”. Such strong messages in the public sphere and the call to prevent and ban the public event culminated in a hate crime, where three people were injured. On that same evening, all other participants were escorted out of the city by SIPA, with the police explaining that they cannot guarantee their safety in Banja Luka.

Despite the fact that this event was denounced by various representatives of the international community, such as the Office of the High Representative for BiH (OHR) and the US Embassy in Bosnia and Herzegovina, and that an urgent investigation was requested to find and prosecute all the perpetrators, none of the perpetrators from the group of hooligans who participated in the attack on LGBTI activists has yet been prosecuted. On the other hand, criminal and misdemeanour regulations in the Republika Srpska have established a mechanism for sanctioning behaviour motivated by prejudice or hatred against a social group; however, in the practice of the Republika Srpska, there has been no judgment for hate crime for years.

Right after this hate crime, President Milorad Dodik announced the passing of a law that would ban members of LGBTI organisations from entering kindergartens, schools and universities for the purpose of preventing “propaganda”.

Living in a homophobic, biphobic, and transphobic environment, continuously having to face discrimination, prohibitions, pressures, and exposure to violence, left serious consequences for all LGBTI people throughout BiH. Constant fear for one's own safety in a situation where representatives of institutions openly say that they cannot provide a safe environment for their citizens was a theme throughout the year for most organisations providing psychosocial support and working to protect the rights of LGBTI people.

Youth Centre KVART is an activist and grassroots organisation whose work and activities are based on uncompromising respect for universal human values such as peace, non-violence, democracy, freedom, equality, and respect for human rights, anti-fascism and justice. KVART's activities focus on young people as the most important component of society and the most capable of achieving positive social change, with the vision of a free and equal society and the mission of combating all forms of social injustice and inequality.

Although additional efforts have been made for years to establish new organisations and develop various collectives and informal groups, at the time of this report, KVART Youth Centre is the only organisation in the Republika Srpska that strategically and programmatically addresses issues of protecting the rights of LGBTI people. With the support of and through cooperation with other organisations, we implement a variety of activities aimed at improving the position of LGBTI people in this part of Bosnia and Herzegovina.

In the past years, we could boast of many diverse activities that significantly contributed to the visibility of LGBTI people, both in the local community and beyond; however, after the incidents in March, the space for our work and our activities focused more on working with the community. We significantly contributed to the building of an institutional network of support in the protection of the rights of LGBTI people through capacity building of representatives of institutions in taking a proactive role in improving the lives of LGBTI people in the Republika Srpska. However, all further activities that were planned in cooperation with various representatives of institutions were postponed due to their refusal to participate, with explanations stating that they have other commitments, that they failed to obtain the consent for participation, and the like.

As one of the key goals of KVART is the empowerment of LGBTI community, over the last year we have included LGBTI people into our programmes through educational, creative, psychological and other empowerment workshops, aimed at building their personal capacities as LGBTI people and providing help in cases of violence or discrimination.

Many LGBTI people sought psychological support, because the situation from the beginning of the year affected their mental health. Throughout

the year, and more so since March, we continuously provided psychological counselling services to LGBTI people in cooperation with the Association "Novi Dan" from Banja Luka; a total of 26 people used the services last year. In 2023, we took part in the establishment of the LGBTInclusive Network, an important resource comprising civil society organisations and individuals, psychotherapists who provide psychosocial support to the LGBTI community in BiH. It played a major role in the reintegration of several people after the events in March.

It is important to note that from March until the end of 2023, 14 members of our organisation left BiH permanently.

In such a hostile environment, it was important to maintain the activities and not to withdraw from the conquered public space; we therefore decided to celebrate 17 May, the International Day Against Homophobia and Transphobia (IDAHOT) in Banja Luka, in cooperation with UNSA GETO and informal group Oqueerno from Banja Luka. During the event, a workshop was organised for the LGBTI community, as well as the presentation of the Manual for police officers in cases of hate crime against LGBTI People, and a talk with a representative of the Ministry of the Interior, with the March attack as one of the main topics. This was followed by a photo exhibition, a film screening, and a party at the end of the evening.

As we actively participated in the development of the Action Plan for the equality of LGBTI people in Bosnia and Herzegovina in 2020, we participated in the process of monitoring and reporting in 2023, sharing information related to activities that contribute to the goals of the Action Plan to Improve the State of Human Rights of LGBTI People in Bosnia and Herzegovina.

In our work and activities, we will continue expanding the network of support, both for people from the LGBTI community, and for all interested individuals, but we will also try to open the space for strengthening the capacity of representatives of institutions and citizens to ensure a better quality of life for all LGBTI people in Bosnia and Herzegovina.

Guidelines for Further Action

1. Appeal to all institutions to properly prosecute cases of hate crime and hate speech against LGBTI people and to sanction hate speech;
3. Build trust of LGBTI people in local institutions of the Republika Srpska;
3. Establishment of an LGBTI safe house in the Republika Srpska;
4. Adoption of a Law on Same-Sex Partnership in the Republika Srpska that would protect same-sex couples in the exercise of their full family rights.

Activities of Organisations Advocating for LGBTI Rights in Tuzla Canton

Since its founding, Tuzla Open Centre (TOC) has worked to empower LG-BTI+ community by proposing and advocating for inclusive policies and legislation, establishing institutional infrastructure support, sensitising the public and conquering public space, and participating in the development and strengthening of local civil society networks. TOC has two horizontal courses of action:

- Cooperating with public institutions and civil society organisations (CSOs)
- Empowering local LGBTI community

The first course of action is the direct cooperation with government institutions, trainings, creation of networks and establishment of new contacts within institutions for the purpose of providing adequate support to LGBTI people in the Tuzla Canton.

The second course of action is the direct work with the community, informing activities, trainings, provision of services and ensuring free space.

In 2023, TOC continued with the Local Network for the Support of LGBTI People in Tuzla Canton, comprising of 14 different institutions, and maintained regular communication with the members, by organising individual meetings and holding Info Sessions. Under this activity, meetings were

held with the Social Welfare Centre, the TC Public Health Institute and a representative of the Tuzla City Council; two info sessions were organised with representatives of the Tuzla Canton Prosecutor's Office and the Ombudsman for Human Rights, as well as civil society organisations, during which they worked on the Protocol for handling cases of violence against LGBTI people and Protocol for handling cases of discrimination against LGBTI people.

For the purpose of empowering the community, 11 workshops were held for the LGBTI community, including the Kvirhana Queer Art and Activism Festival. The workshops were organised in a safe and free space, and to a greater extent they occupied the space of public institutions and thus brought the institutions closer to the community. Many workshops were dedicated to bringing the community together and providing space for personal expression.

LGBTI topics are very rare or non-existent in the media, however, despite this, in 2023 TOC continued to implement its annual campaign to mark important dates for the LGBTI community, as well as the advertising campaign on LED Billboards at three extremely busy locations in the city of Tuzla. Furthermore, TOC made available its web platform to LGBTI people to exchange opinions and published articles written by LGBTI people from Tuzla. These campaigns and the visibility of TOC received excellent feedback from both the LGBTI community and the broader community.

Legal Framework and Institutional Action

It is a fact that the legal framework for protecting the rights of LGBTI persons and ensuring equality has been improving over the years and that its implementation is continuously enhanced with the support of TOC. But, as in previous reports, we must note that hate speech, discrimination and violence against the LGBTI community still exist in this canton.

As for the legal framework, Article 7 of the Constitution of Tuzla Canton stipulates: In implementing its Jurisdiction, the Canton ensures and undertakes all necessary measures for protecting human rights and freedoms set forth in the Constitution of Bosnia and Herzegovina and its annexes, Constitution of the Federation of Bosnia and Herzegovina and its annexes, and this Constitution, paying special attention to ensuring equality of all peoples and citizens in the Canton, municipalities and cities.

Local communities and local self-government units in the FBiH are also responsible for ensuring and protecting human rights and fundamental freedoms. The Statute of the City of Tuzla (adopted in 2021) reads in Article 11 Exercise of Rights and Freedoms: The City will create conditions

for its citizens to fully and democratically exercise all rights and freedoms set forth in the provisions of Article II A 1 to 7 of the Constitution of the Federation of Bosnia and Herzegovina and international instruments contained in the Annex to the Constitution of the Federation, which will be overseen by all city authorities, each within its jurisdiction. Furthermore, Article 14 Competences of the City, paragraph 2 of Tuzla Statute reads: The City's own competencies include: ensuring and protecting human rights and fundamental freedoms in accordance with the Constitution of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Tuzla Canton. Article 8 of the FBiH Law on Principles of Local Self-Government stipulates: The competencies of a local self-government unit shall specifically include: ensuring and protecting human rights and fundamental freedoms in accordance with the Constitution", which is evident in the reasons for adopting the Statute of the City of Tuzla, Chapter I (General provisions - Articles 1 through 12) which mentions the relationship with human rights institutions.

Despite having a relatively good legal framework and various international regulations, constitutions and laws committing to equal treatment, TC institutions are nevertheless an inadequate support system for their LGBTI citizens. This is due to a lack of awareness and knowledge among representatives of public institutions on how to work with LGBTI people. In 2023, Tuzla Open Centre held info sessions for the purpose of raising awareness of public institutions' representatives about the problems that LGBTI community faces. Tuzla Open Centre continued its cooperation with public institutions in 2023, particularly through the Coordination Group for the Youth Strategy of the City of Tuzla and the Partnership Group for Social Development of the City of Tuzla, which monitors the implementation of the 2026 Development Strategy of the City of Tuzla.

As they do every year, TOC organised the Kvirhana Festival in the premises of the public institution "Culture Centre of the City of Tuzla", sending a clear message that public space must be free for all people.

In 2023, under the project: "Freedom of assembly as the heart of LGBTI equality struggle" that TOC implements with the support of the USAID/INSPIRE programme, a detailed analysis of the Law on Public Assembly in the Tuzla Canton was launched with the aim of initiating the amendments to this Law. The goal is to align it with international standards in securing LGBTI events.

Tuzla Open Centre is becoming a recognisable organisation among the canton's institutions, serving as a relevant resource for support and building links with the community. This is also visible from the fact that the TC Public Health Institute contacted TOC at the end of the year with the idea to work together on the implementation of community outreach activities.

Social Reality in the Local Community

Homophobia, biphobia and transphobia are a daily reality for LGBTI community in Tuzla Canton, but also the entire Bosnia and Herzegovina. Public institutions do not do enough to combat hate speech, violence and discrimination against LGBTI people, and the distrust of public institution officials by LGBTI community is significant and prevents adequate reporting of LGBTI human rights violations. We have noticed a rise in peer violence and domestic violence among LGBTI people, while educational institutions remain closed to any discussion about LGBTI topics and equality. There still exists a great threat of psychological, verbal and physical violence against LGBTI people in the public sphere – a direct consequence of the rise of right-wing and fascist ideologies and policies. Tuzla Open Centre has recognised these difficulties and obstacles and strives to alleviate the consequences by providing information, training and a safe and free space for LGBTI community in Tuzla Canton.

Guidelines for Further Action

1. Amend the Law on Public Assembly of Tuzla Canton and change the police practice in accordance with international legal standards of securing LGBTI events;
2. Promote LGBTI rights among the general public to reduce the levels of homophobia, biphobia and transphobia in the public sphere;
3. Work to expand the network of media that regularly report on the LGBTI topics in this canton;
4. Organise trainings for health professionals and teaching staff about violence against LGBTI people, especially in terms of family and peer violence, focusing on recognition of signs of violence, as well as its consequences;
5. Train and raise awareness of public protection authorities and the judiciary about LGBTI issues to develop awareness of the problems in access to justice for LGBTI community members;
6. Enact a law on same-sex partnership to protect the rights of couples currently facing problems in exercising their rights, and problems with migration due to this obstacle;
7. Decentralise activist efforts and donor policies.

Activities of the BH Pride March

The Bosnia and Herzegovina Pride March is an informal collective of human rights activists. The collective pursues common values and organises an annual event—a protest walk in the capital of BiH. Furthermore, Pride March organises various events around a theme chosen for each year. The theme of last year's March was 'alliance', and we walked in solidarity under the slogan "Proudly Together".

Several allied organisations and individuals supported the campaign and activities of Pride March. They organised film screenings, panel discussions and artistic performances in cooperation with partners. During the year, they managed to get premises, which they are trying to turn into a safe place for the community. In this space, community members can present their activities, participate in events and feel a friendly welcome. Although the primary activity of Pride March is the organisation of the annual protest, the collective also continuously organises events for the community, including film screenings, various workshops and parties. These informal events are very important for the community, especially in a society where safe spaces are not so common.

Last year, some of the members experienced firsthand what it means to be the target of a hate crime on the ground of sexual identity. During the preparations for Pride March, an event, which was supposed to include a film screening, discussion and a party in Banja Luka on 18 March 2023, was cancelled at the last minute by order of the local police. On the day it was supposed to be held, activists of Pride March, who were already in Banja Luka, were physically attacked by a group of thirty to forty hooligans. The police did not intervene during this incident, which resulted in a hate crime on the ground of sexual orientation and gender identity.

After the attack, the legal team of BH Pride March filed six complaints to the Institution of the Human Rights Ombudsmen in Bosnia and Herzegovina. To date, a response was received in relation to only one complaint against the RS Ministry of the Interior, while responses to the remaining five complaints are still pending.

This incident partly served as inspiration for the theme of this year's Pride March – "Violence against LGBTIQ people". The focus is on all forms of violence, with special emphasis on institutional violence. Through the activities of this year's campaign, the Pride March collective will try to make the public aware of the different types of violence, help in their recognition, and encourage people to actively oppose violence. The topic of violence is extremely important, and life without fear is one of the priorities for our collective, as is reflected in this year's motto – "I love no fear".

Activities of the Group of Parents and LGBTIQ+ Children

The group “ZAGRLJAJ” (HUG) brings together families, parents and LGBTIQ+ people who aspire to a more inclusive society; families that strive towards all families being treated with dignity and respect – without any form of discrimination or oppression. They gathered to ensure a safe space in society and in families for self-discovery and authentic lives, to provide a support network for LGBTIQ+ people and their families in Bosnia and Herzegovina. They work towards overcoming prejudices and stereotypes about LGBTIQ+ people, they encourage the development of systemic and institutional support for LGBTIQ people and their families, empower rainbow families for activism, provide education on LGBTIQ+ topics in the educational system and beyond, and they work to reduce the exclusion of LGBTIQ+ people from “traditional” families.

The group provides support to parents in their efforts to help other parents and families understand, accept and support their lesbian, gay, bisexual, transgender, intersex, and queer family members with love and pride. “Zagrljaj” strives to empower family members who, through their actions, create safe spaces for all families in Bosnia and Herzegovina through the values of acceptance and support.

The target audience of the Group are LGBTIQ+ people, family members, young and future parents and citizens of Bosnia and Herzegovina.

In 2024, they participated in the implementation of the Project entitled “Freedom of assembly as the heart of the LGBTI equality struggle”, at the invitation of Tuzla Open Centre through talks with parents of LGBTIQ children; they organised a gathering of parents and LGBTIQ children in Sarajevo; participated in an info session where they talked about the procedures for reporting hate crimes and hate speech, the roles of the police and the prosecutor’s office, as well as the support SOC can provide to victims of such cases on 25 April 2024 in Sarajevo.

They plan to participate in the 2024 KVIRHANA festival on 6-8 June 2024 at the invitation of Sarajevo Open Centre, to take an active part in the 2024 BH Pride March, and to organise a new gathering of members at the end of 2024.

All members of “Zagrljaj” participate voluntarily and as activists. Contact: gridzagrljaj@gmail.com.

GLOSSARY OF LGBTI TERMS⁶⁴

BISEXUAL PERSON

A person who is sexually and/or emotionally attracted to persons of both sexes.

COMING OUT

The concept is derived from the English phrase coming out of the closet, routinely used to describe public or open declarations and affirmations of one's sexual orientation (for lesbians, gay men and bisexuals), gender identity (for trans persons) and sex characteristics (for intersex persons). It occurs on two levels: as a self-discovery and as a (more or less) public notification to others. Coming out is of great importance to LGBTI people, as it represents a public affirmation of their own identity, which is highly significant for the psychological health and quality of life of this minority group.

DISCRIMINATION

Discrimination refers to every distinction, exclusion, limitation and any form of putting a person or a group of persons at disadvantage. There are various grounds and characteristics by which a person or a group of persons is led to a disadvantaged position. Lesbians, gay men and bisexual persons can be discriminated against on the grounds of *sexual orientation*, trans* individuals (including transgender and transexual persons) on the grounds of *gender identity* and gender expression, and intersex persons on the grounds of *sex characteristics*. It is therefore essential that all three grounds (sexual orientation, gender identity and sex characteristics) be legally recognised as grounds on the basis of which discrimination is prohibited.

The principle of non-discrimination

Equal treatment of individuals or groups, regardless of their specific characteristics; used to assess the apparently neutral criteria and practices which can cause effects that systematically put the persons with these characteristics in an unfavourable position.

HOMOPHOBIA

Irrational fear, intolerance and prejudice against gay men and lesbians. It manifests as a conviction in heterosexual superiority. Such conviction incites violence against persons who are not heterosexual, which is justified by a belief in one's own superiority (and the inferiority of others). Violence is reflected in verbal and physical attacks and discrimination.

64 The Glossary of LGBTI terms was created through joint work of Sarajevo Open Centre team.

HOMOSEXUAL PERSON

A person who is attracted to persons of the same sex.

Lesbian

A woman who is sexually and/or emotionally attracted to other women.

Gay

A man who is sexually and/or emotionally attracted to other men. It can also be used as an adjective (e.g., gay person), and as such can include both men and women of same-sex orientation.

Homosexual

An outdated clinical term for persons whose sexual orientation is towards persons of the same sex, i.e., persons that are sexually and/or emotionally attracted to persons of the same sex. This term is inappropriate and many gays and lesbians find it offensive. More correct terms are gay (men)/gays and lesbians.

HOMOSEXUALISM

An outdated clinical term that was used to medically mark the same-sex sexual orientation. It is considered offensive because it implies that homosexuality is a disease to be treated. Bearing in mind that the World Health Organisation (WHO) confirmed in 1990 that homosexuality is like heterosexuality, a natural variation of human sexuality, this term is no longer in use.

INTERSEX PERSONS

Persons whose *sex characteristics*, including chromosomes, gonads and genitalia, do not match the typical, binary categories of male and female bodies. There are different forms of intersexuality. Persons can be male, female and intersex. *Intersex persons*, like male and female persons, have their own sexual orientation and gender identity. In the past, these persons were often called hermaphrodites, but this term is considered discriminatory and medically inaccurate.

INTERSECTIONALITY

An approach stemming from the sociological theory of intersectionality, which analyses discrimination as a complex system in which different forms of discrimination are based on different categories of identity (gender, sex, race, class, sexual orientation, gender identity). These identities are interconnected and influence each other, and have to be considered together when reflecting on discrimination.

LGBTI

The all-encompassing term used to denote lesbians, gay men, bisexual, trans* (gender) and intersex persons. The term denotes a heterogenic

group usually identified by the acronym LGBTI in social and political activism.

LGBTTIQ

An abbreviation for lesbians, gay men, bisexual, transgender, transexual, intersex and queer persons.

QUEER

A term which was used earlier in the English language as a derogatory way to refer to non-heterosexual persons. The term was later taken over by LGBTI people as a way to describe themselves. Some persons particularly appreciate this term because it signifies defiance and includes diversity – not only gays and lesbians, but also bisexual, transgender and intersex persons, and even heterosexual persons living outside the hetero-patriarchal norms.

GENDER IDENTITY

Gender identity is associated with an individual's experience and comprehension of one's own sex and gender, which may or may not correspond to the sex assigned at birth. Among other things, gender identity refers to personal experience of one's own body, clothing and speech. Persons whose gender identity is in accordance with the sex they were assigned at birth are called *cisgender persons*, while persons whose gender identity is not in accordance with the sex they were assigned at birth are called *trans(gender) persons*. Transexual persons, as a sub-group of transgender persons, are persons whose gender identity is not in accordance with the sex they were assigned at birth and who intend to adjust their biological sex, or who are in the transition process.

Gender expression

Visual and external presentation of each person, including personality features, appearance and behaviours that are considered masculine or feminine in a certain culture or time period (hence, typical for male or female social roles).

GENDER AFFIRMING HEALTHCARE

A term that denotes a wide range of healthcare services required by transgender, gender diverse and intersex people, and of which affirm or confirm a person's gender identity, i.e. their sex characteristics. The term 'gender reassignment' is also used, but it has a narrower meaning than gender affirming healthcare and refers to the medicalization of the transition process.

SEXUAL ORIENTATION

Emotional and/or sexual attraction or affection towards persons of the same and/or opposite sex/gender. Classification into *heterosexual*

(attracted to the persons of the opposite sex), *homosexual* (attracted to the persons of the same sex) and *bisexual* (attracted to the persons of both the same and the opposite sex) is usually being used. In legal texts in Bosnia and Herzegovina, the terms sex orientation, sexual decision, sexual preference, sex preference and sexual choice are often used, but the use of the term sexual orientation is recommended.

SEX CHARACTERISTICS

A person's sex characteristics, like the chromosomes, gonads and genitalia, can be different from the typical, binary division of male and female bodies. Persons can therefore be divided into male, female and intersex. Intersex persons can be discriminated against, or be targets of hate crimes and prejudices because of their sex characteristics.

TRANSGENDER PERSON

A term used for persons whose gender identity is not in accordance with the sex they were assigned at birth. Transgender persons feel, prefer or choose to present themselves differently from traditionally prescribed gender roles assigned to them at birth. This can be expressed through clothing, way of speaking, manners, makeup or body modifications. Among other things, the term transgender refers to persons who do not identify themselves as either male or female, transexual, transvestites, crossdressers, a-gender, non-binary, gender fluid and other gender-variant persons. A *transgender man* is a person who was assigned the female sex at birth, but whose gender identity is masculine, or in the spectrum of masculine gender identities. A *transgender woman* is a person who was assigned the male sex at birth, but whose gender identity is feminine, or in the spectrum of feminine gender identities.

Transexual person

A person who has a clear desire and intent to modify their sex, or who has partially or completely modified their body (including physical and/or hormonal therapy and surgeries).

TRANSPHOBIA

Irrational fear, intolerance and prejudice against transgender persons.

HATE CRIME (criminal offences perpetrated out of hatred)

Refers to criminal offences motivated by prejudices against a particular person or group of persons. Hate crimes include intimidation, threats, property damage, abuse, homicide or any other criminal act whose victim became a target of the assault because of their actual or assumed sexual orientation, gender identity or sex characteristics, or the victim is connected, supports, belongs to or is a member of an LGBTI group.

ADDENDUM

Political System of Bosnia and Herzegovina

The political system of Bosnia and Herzegovina is highly complex and asymmetric. Bosnia and Herzegovina consists of 13 federal units. Bosnia and Herzegovina is administratively divided into two Entities (the Federation of BiH and the Republika Srpska) and the Brčko District. The Republika Srpska is unitary and made up of municipalities and towns, while the Federation of BiH comprises 10 cantons, each of which is made up of at least three municipalities/ towns. The responsibilities and interrelationships between the state, Entities and Brčko District are regulated in the BiH Constitution, but in the daily political life, we often see different interpretations of these provisions, which directly affects the (lack of) adoption and implementation of laws and other public policy documents (strategies/action plans).

The state and both Entities have their own constitutions and different government and political systems. Brčko District has its own administrative system and its own Statute as the supreme legislative act, and in terms of jurisdiction, it is almost the same as the Entities. Laws and other public policies of importance for the improvement of LGBTI people's equality are under the jurisdiction of the state, Entities, cantons and Brčko District. This complexity points to the need for a coordinated approach, developing capacities and raising awareness of the needs of LGBTI people at all levels of government. The work on improvement of LGBTI people's equality must not be solely under the jurisdiction of the state and entity-level institutions, it is rather important that other institutions, especially at the level of cantons and Brčko District, undertake measures to revoke systematic discrimination against LGBTI people, and work on improving the equality of LGBTI people.

At the **state level**, there is a three-member Presidency whose members, one Bosniak, one Croat and one Serb, rotate every eight months in presiding over the institution. The executive government is made up of the Council of Ministers, with one presiding member and nine ministries. The state institutions are responsible for foreign, financial and monetary policies, supervision and governance of borders, foreign trade, immigration, refugees and asylum regulation. One of the ministries within the BiH Council of Ministers is the Ministry for Human Rights and Refugees, within which the BiH Gender Equality Agency operates. This Ministry and the Agency itself are of great importance for the improvement of the human rights of LGBTI people. The Institution of Human Rights Ombudsman

of Bosnia and Herzegovina operates at the level of BiH - and its three Ombudspersons are responsible for the entire Bosnia and Herzegovina and all government levels. According to the Anti-Discrimination Law, the Institution of Ombudsman is also the body competent for all issues regarding equality (equality body). The legislature (Parliamentary Assembly) is bicameral, and consists of the House of Representatives, as the lower house, and the House of Peoples, as the upper house. The Gender Equality Commission operates within the House of Representatives, while the Constitutional-Legal Commission is the specialised gender-equality body in the House of Peoples. Some of the key laws for LGBTI people, such as anti-discrimination laws, laws on gender equality, on aliens and asylum, are under the state jurisdiction.

Both Entities have one president and two deputy presidents. The entity governments have one prime minister and 16 ministers. Although the positions of the upper houses are not identical in the political systems of the Republika Srpska and the Federation of BiH, both can be classified as bicameral, each with a 'house of representatives' and a 'house of peoples'. Both entity parliaments have parliamentary working bodies for human rights and gender equality/ equality of opportunity. Gender centres operate within the executive branch, as government institutions for the improvement of gender equality, which also play a key role in the coordination of entity institutions related to the human rights of LGBTI people, as there are no entity institutions specialised in human and/ or minority rights. For example, labour legislation, criminal legislation related to hate crime and family legislation are under the jurisdiction of the Entities.

Cantons within the Federation of BiH (ten of them) are guaranteed substantive autonomy. The cantons have their governments and their unicameral parliaments. Although the cantons are the third level of government from the top, they have the status of federal units and therefore they have matters within the scope of their own jurisdiction (like education at all levels, employment and healthcare), for which they legislate and produce public policies. Although the Federation of BiH has higher authority than cantons, it sometimes happens that cantons pass legislation that is contradictory to the Federation of BiH regulations and laws, or they fail to implement the existing regulations of the Federation of BiH. The cantons do not have offices/institutions for gender equality and/ or human rights within their governments, and only two cantons have coordination committees for gender equality (a working group consisting of representatives of different ministries). Almost none of the cantons is individually undertaking any coordinated measures for improving the human rights of LGBTI people.

Brčko District is practically equal to the Entities in terms of jurisdiction, despite the fact it is also a form of a local unit. The District is governed by a

Mayor, who presides over the Government consisting of 10 departments. Laws and other legislation are passed by the Assembly of the Brčko District. Brčko District does not have an office/institution for gender equality and/or human rights within its government, but there is a Gender Equality Commission operating in the Assembly. The institutions of the District have not undertaken any measures for the improvement of the human rights of LGBTI people so far.

The highest judicial instances are the three constitutional courts, one for each entity and one at the state level. Due to the nature of the political system, Bosnia and Herzegovina does not have a supreme court. The Entities have first instance and appellate courts, as well as the entity supreme courts. Brčko District has its own first instance and appellate court. The police are under the competence of the Entities and Brčko District, and there are ten cantonal police authorities in the Federation of BiH, which share their jurisdiction with the entity police.

About Sarajevo Open Centre

Sarajevo Open Centre is a civil society organisation that works on promoting human rights in Bosnia and Herzegovina. We initiate and create systemic social changes, with an emphasis on gender equality and the position of LGBTI+ people.

We will mention only some of the achievements related to the equality of LGBTI people and women. Apart from psychosocial and legal counselling, we continued running the only LGBTI medium in the country – www.lgbti.ba portal. We organised training for the police, prosecutor's offices and courts, with a focus on hate crime, hate speech and the application of anti-discrimination law; for medical professionals and health workers, with a focus on trans-specific and trans-inclusive gender reassignment; for LGBTIQ community. We have worked intensively on creating a local institutional support network for LGBTI people in Sarajevo Canton, improving the regulation of biomedically assisted fertilisation in the Federation of BiH, rights of female workers related to discrimination on the ground of sex and maternity leave, introducing gender-sensitive language in parliaments and universities, adopting and implementing cantonal gender action plans, but also raising awareness about gender-based violence in BiH.

Over the past years, several of our legislative and policy initiatives have entered government or parliamentary procedure. We focused our advocacy activities on policies for equality of women and LGBTI people in BiH, reproductive rights of women and men, parenting in the context of reconciling private and business life, freedom of assembly of LGBTI people, improvement of the institutional framework for the protection

from violence and discrimination, and we intend to continue working on issues concerning transgender persons, intersex persons, same-sex partnerships, their social inclusion, but also the position of LGBTI people in education, health, work and employment.

We have carried out media campaigns that have reached over one million citizens of BiH, and we also organised LGBTI film festival Merlinka, which, in cooperation with Tuzla Open Centre, became the local festival Kvirhana in 2021.

For more information about our work, see www.soc.ba.

This publication is part of the Human Rights edition, published by Sarajevo Open Centre.

Editor

Darko Pandurević (Sarajevo, 1991) has been a program and advocacy manager at Sarajevo Open Centre since 2021. He has been involved in SOC's activities since 2015, first as a volunteer in LGBTI program, and then as a project assistant in the coordination of the Initiative for the Monitoring of EU Integration in BiH activities. The focus of his work and interests in SOC so far have been the human rights of LGBTI people, legal counselling for LGBTI people, participation in research and amendments to existing regulations and training activities in human rights, hate speech and discrimination. He graduated from the Faculty of Law, University of Sarajevo.

Contact: darko@soc.ba

Authors

Amil Brković (Mostar, 1995) works at Sarajevo Open Centre as a legal advisor and program coordinator. He provides legal counselling to LGBTI people, monitors human rights violations against LGBTI people, coordinates SOC strategic litigation, advocates for the rights of same-sex couples and the general improvement of the legal position of LGBTI people in BiH and coordinates judicial community training on LGBTI human rights in BiH. He graduated as the best student of his generation from the Faculty of Law, Džemal Bijedić University in Mostar. He is currently pursuing a master's degree at the Faculty of Law, University of Sarajevo.

Contact: amil@soc.ba

Delila Hasanbegović Vukas (Sarajevo, 1991) is a program coordinator at Sarajevo Open Centre. She advocates for access of transgender, intersex and gender diverse people to gender affirming healthcare and legal recognition of gender in Bosnia and Herzegovina. She coordinates the regionalisation of inclusive psychosocial support and mental health services for LGBTIQ+ people in BiH. She also advocates for gender equality in labour relations and labour market, balancing of private and professional life, as well as advocating for sexual and reproductive rights and health. She is the author of several papers on human rights of women and LGBTI people, gender equality, feminism, reproductive justice, political participation and representation of women. She graduated from the Faculty of Law of the University of Sarajevo.

Contact: delila@soc.ba

Amina Dizdar (Sarajevo, 1992) is a program coordinator at Sarajevo Open Centre. She analyses laws and actively advocates for amendments

to criminal legislation in BiH to improve protection against domestic violence and violence against women. She also advocates for amendments to laws and the adoption of public policies concerning the position of women in BiH society, such as political participation, reconciliation of private and business life, maternity benefits, and menstrual poverty. She conducts research and writes reports, both at the level of organisation and international mechanisms for the protection of human rights of women and LGBTI people, such as those for CEDAW and GREVIO committees.

Contact: amina@soc.ba

Authors (Chapter IX):

Branko Ćulibrk (Prijedor, 1986) graduated in biology from the Faculty of Natural Sciences and Mathematics at the University of Banja Luka. He is a longtime peace and LGBTI human rights activist in BiH. He is currently the Executive Director of the KVART Youth Centre Prijedor. In cooperation with Sarajevo Open Centre, he participated in several studies related to LGBTI rights.

Contact: brzibranko@gmail.com, kvartprijedor@gmail.com

Admir Adilović, a 27-year-old non-binary person, Executive Director of the Tuzla Open Centre. Admir has been engaged in activism since the age of fifteen, in Tuzla, where they were born and raised. Admir is a Gestalt psychotherapist under supervision, a business psychologist, and an author. They expand their activism into the arts by writing feminist and queer poetry, as well as plays on LGBTI+ people's lives. They were involved in the creation of numerous manuals and publications, but they particularly highlight the Manual for Social Workers Working with LGBTI+ People in Serbia.

Contact: admir@toc.ba